

COVID-19 NEWS OF INTEREST

EU State Aid in Times of COVID-19

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The European Commission (the “Commission”), which has exclusive jurisdiction to review State aid cases, has demonstrated its intention, and ability, to react rapidly to requests from Member States in the rescue of distressed companies as a result of the Covid-19 crisis affecting the European Union (“EU”).¹ The Commission has indicated from the outset that, given the limited size of the EU budget, the main aid responses will come from Member States. As a matter of fact, as of today, the Commission has approved around 2,000 billion euros in public funding granted by Member States to support their distressed economy in the context of the Covid-19 crisis.

As further detailed below, public support measures in the context of Covid-19 can take various forms, some of which do not need to be notified, while others need prior approval from the Commission.

1. Aid that does not need to be notified

1.1. Suspension of taxes or social contributions

The Commission indicated early on that public support measures that are available to all companies, such as wage subsidies and suspension of payments of corporate and value added taxes or social contributions, will not require the Commission's approval.² Likewise, financial support directly to consumers for cancelled services or tickets not reimbursed by the concerned operators do not need to be notified.

¹ Communication from the European Commission, *Coordinated economic response to the COVID-19 Outbreak*, 13 March 2020.

² Communication from the European Commission, *Coordinated economic response to the COVID-19 Outbreak*, 13 March 2020.

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However, selective (tax) debt renegotiation may entail some State aid element that would need to be notified to the Commission.

1.2. De minimis aid

Under the *De Minimis* Regulation,³ aid of up to EUR 200,000 (EUR 100,000 in the road freight transport sector) per beneficiary over a three-year period is exempted, as well as subsidised loans of up to EUR 1 million and subsidised guarantees for loans of up to EUR 1.5 million over a five-year period. The benefit of the *De Minimis* Regulation is however subject to strict conditions, notably in terms of transparency of the aid.

1.3. General Block Exemption Regulation

Member States can design individual support measures or schemes in line with the General Block Exemption Regulation⁴ (the “GBER”) without the involvement of the Commission.

However, aid under the GBER cannot be granted to companies that are “in difficulty” in the sense of the GBER,⁵ which reduces the scope of potential beneficiaries in the context of the Covid-19 crisis. The categories of aid contemplated under the GBER are also strictly defined, and their respective amounts capped at relatively low levels (although the Commission has launched a public consultation towards a possible relaxation of such exemption rules in light of the crisis⁶).

2. Aid that must be notified

Unless granted under market conditions (the so-called market economy operator principle, or “MEOP”), or under *pari passu* conditions along with private investors, the demonstration of which may constitute an uphill battle in the current context, other aid measures (that do not fit into one of the above-mentioned categories) constitute State aid and require approval from the Commission. In the context of the Covid-19 outbreak, different legal bases can be used under the Treaty on the Functioning of the European Union (the “TFEU”) to ensure the compatibility of the aid measure.

³ Commission Regulation (EC) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 TFEU to *de minimis* aid (OJ L 352 of 24.12.2013) (the “*De Minimis* Regulation”).

⁴ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the TFEU (OJ L 187 of 26.6.2014).

⁵ GBER, article 2(18).

⁶ https://ec.europa.eu/commission/presscorner/detail/en/ip_20_857

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Helpfully, the Commission has indicated that the “one time, last time” principle, following which a company cannot receive new aid if it has received rescue or restructuring aid with the last ten years,⁷ may be waived in the context of Covid-19 (although some uncertainty remains as to the position the Commission will adopt in practice).⁸

2.1. Article 107(2)(b) TFEU: Aid to compensate companies for damages suffered as a result of the COVID-19 outbreak

Article 107(2)(b) TFEU enables Member States to compensate companies for damage incurred as a result of natural disasters or exceptional occurrences, such as the Covid-19 outbreak as recognized by the Commission.⁹ Such measures can be targeted to assist specific sectors (aid schemes) or individual companies. Although the Commission had initially identified the health, tourism, culture, retail, transport and event-organizing sectors as natural beneficiaries of such aid, it is now generally recognized that aid under article 107(2)(b) TFEU can be granted to all sectors.¹⁰

Two main conditions must be verified to ensure the compatibility of such aid:¹¹

- (i) There must be a direct causal link between the aid granted and the damage resulting from the Covid-19 outbreak (e.g. additional costs, forgone revenues, etc., less any costs not incurred); and
- (ii) Any aid must be limited to what is strictly necessary to make good the damage (e.g. damage already compensated by insurance grants cannot be compensated twice under such aid measure).

As of today, the Commission has approved only a handful of measures under article 107(2)(b) TFEU, which pales in comparison to the more than one hundred measures approved under other legal bases since the beginning of the crisis (see below).¹²

⁷ Section 3.6.1 of the Rescue and Restructuring Guidelines.

⁸ Statement by Executive Vice-President Margrethe Vestager on a draft proposal for a State aid Temporary Framework to support the economy in the context of the COVID-19 outbreak, 17 March 2020 (STATEMENT/20/479).

⁹ Communication from the European Commission, *Coordinated economic response to the COVID-19 Outbreak*, 13 March 2020.

¹⁰ See e.g. two Danish schemes (SA.56791 and SA.56774) that are not sector specific.

¹¹ See Template Notification under Article 107(2)(b) TFEU published by the European Commission.

¹² The Commission maintains a list of its State aid decisions related to Covid-19 at:

https://ec.europa.eu/competition/state_aid/what_is_new/State_aid_decisions_TF_and_107_2_b_and_107_3_b.pdf

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Article 107(2)(b) TFEU seems to have been favored by Nordic countries, with three quarters of such measures notified by Denmark¹³ and Sweden alone.¹⁴ (France and Germany each have adopted one aid regime under this legal basis.¹⁵) Interestingly, more than a third of the measures approved under article 107(2)(b) TFEU were individual measures targeting specific distressed airlines.¹⁶ The event-organizing sector was also among the top beneficiaries of such aid, with relatively low budgets however.¹⁷

2.2. Article 107(3)(b) TFEU: Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak

The Commission adopted, on 19 March 2020, after a quick consultation with the Member States, a Temporary Framework under Article 107(3)(b)¹⁸ (generally applicable until 31 December 2020), which enables Member States to remedy the serious disturbance to their economy, in the form of schemes or individual measures. Such state of disturbance, as first recognized for Italy,¹⁹ has now been generalized to all other Member States. The Temporary Framework has been amended twice already by the Commission, on 4 April and 8 May 2020, with a view to further extending the categories of measures rendered compatible under this text.

Under the Temporary Framework, Member States are able to grant aid, for a limited period of time, to remedy the liquidity shortage faced by companies and ensure that the disruptions caused by the Covid-19 outbreak do not undermine their viability. Over one hundred measures have now been approved by the Commission on that basis since the beginning of the crisis.²⁰

The Commission applies the Temporary Framework to all relevant notified measures after 19 March 2020 (even if the measures were notified prior to that date), and also to unlawful, non-notified aid if the aid was granted after 1 February 2020.

¹³ SA.56685, SA.56791, SA.56774 and SA.56795.

¹⁴ SA.57501 and SA.57061.

¹⁵ SA.56765 (France) and SA.56867 (Germany).

¹⁶ SA.56795, SA.57061 and SA.56867 ; see also, in the airline sector, the French regime offering a deferred payment of certain aeronautical taxes (SA.56765).

¹⁷ SA.56685 and SA.57501.

¹⁸ Communication from the European Commission, *Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak*, 19 March 2020. https://ec.europa.eu/competition/state_aid/what_is_new/sa_covid19_temporary-framework.pdf

¹⁹ https://ec.europa.eu/commission/presscorner/detail/en/ip_20_454

²⁰ https://ec.europa.eu/competition/state_aid/what_is_new/State_aid_decisions_TF_and_107_2_b_and_107_3_b.pdf

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The Commission will consider such aid compatible, under Article 107(3)(b) TFEU, under certain conditions, including that the aid is granted to companies which were not in difficulty²¹ on 31 December 2019 but entered in difficulty thereafter as a result of the COVID-19 outbreak.

The Commission has specified that aid measures under the Temporary Framework may generally be cumulated with one another, and may also be cumulated with aid under the *De Minimis* Regulation or under the GBER (provided the cumulation rules of those regulations are otherwise respected). Conversely, aid granted under section 3.2 of the Temporary Framework (state guarantees on loans) shall not be cumulated with aid granted, for the same underlying loan principal, under section 3.3 (loans with subsidized interest rates) and vice versa. However, a beneficiary may benefit in parallel from different measures under section 3.2 or section 3.3 provided the overall amount of loans per beneficiary does not exceed the ceilings set out in the Temporary Framework (see below).

Section 3.1 – Direct grants, selective tax advantages, repayable advances and other advantages

With respect to direct grants, selective tax and payment advantages, repayable advances, as well as (as a result of the amendment of the Temporary Framework of 4 April 2020) guarantees, loans and equity injections (Section 3.1) provided by the Member State, the Commission will consider such aid compatible provided that a certain number of conditions are met, including:²²

- (i) The aid does not exceed EUR 800,000 per beneficiary;
- (ii) The aid is granted on the basis of a scheme with an estimated budget.

Specific conditions apply for aid in the form of loan and loan guarantees, for both investment and working capital needs. Such aid may be cumulated with direct grants, repayable advances or tax advantages. The Commission specifies that such aid can be provided directly by the Member State or through credit institutions and other financial institutions.²³

²¹ Within the meaning of article 2(18) of the GBER.

²² For agricultural, fisheries and aquacultural sectors, specific conditions apply.

²³ In the latter case, certain conditions must be complied with for the financial institution not to be considered a beneficiary of the aid itself (to the largest extent possible, the advantages of the public guarantee or subsidised interest rates on loans must be passed on to the final beneficiaries).

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Section 3.2 – Aid in the form of guarantees on loans

With respect to aid in the form of guarantees on loans (Section 3.2), the Commission will consider such aid compatible provided that a certain number of conditions are met, including:

- (i) The duration of the guarantee is limited to maximum 6 years;
- (ii) Guarantee premiums are set at a minimum level as follows:²⁴

Type of recipient	Credit risk margin for a 1-year maturity loan	Credit risk margin for a 2-3 year maturity loan	Credit risk margin for a 4-6 year maturity loan
SMEs	25 bps	50 bps	100 bps
Large enterprises	50 bps	100 bps	200 bps

- (iii) For loans with a maturity date beyond 31 December 2020, the amount of the loan principal does not exceed: (a) double the annual wage bill of the beneficiary²⁵ for 2019 (or last year available); or (b) 25% of total turnover of the beneficiary in 2019.²⁶ For loans with a maturity until 31 December 2020, the amount of the loan principal may be higher with appropriate justification; and
- (iv) The guarantee cannot exceed 90% of the loan principal, provided losses are sustained proportionally and under the same conditions by the credit institution and the State.²⁷ As a result of the amendment of the Temporary Framework of 4 April 2020, Member States can provide guarantees covering 100% of the risk for loans up to the nominal value of EUR 800,000 (see section 3.1).

²⁴ As an alternative, Member States may notify schemes (as opposed to individual guarantees) where maturity, pricing and guarantee coverage can be modulated (e.g. lower guarantee coverage offsetting a longer maturity).

²⁵ Including social charges as well as the cost of personnel working on the undertakings site but formally in the payroll of subcontractors. In the case of undertakings created on or after 1 January 2019, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation.

²⁶ With appropriate justification and based on a self-certification by the beneficiary of its liquidity needs, the amount of the loan may be increased to cover the liquidity needs from the moment of granting for the coming 12 months (18 months for SMEs).

²⁷ If not (where losses are first attributed to the State and only then to the credit institutions, i.e. a first-loss guarantee) this is reduced to 35% of the loan principal. In both cases, when the size of the loan decreases over time, the guaranteed amount has to decrease proportionally.

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Section 3.3 – Aid in the form of subsidised interest rates for loans and subordinated debt

With respect to aid in the form of subsidised interest rates for loans and subordinated debt (Section 3.3), the Commission will consider such aid compatible provided that a certain number of conditions are met, including:

- (i) The loan contracts are limited to a maximum of 6 years;
- (ii) The loans must be granted at reduced interest rates which are at least equal to the base rate (1 year IBOR or equivalent as published by the Commission²⁸) applicable on 1 January 2020 plus the credit risk margins applicable for guarantees (see table above). As a result of the amendment of the Temporary Framework of 4 April 2020, Member States can provide zero-interest for loans with a nominal amount up to EUR 800,000;
- (iii) For loans with a maturity date beyond 31 December 2020, the amount of the loan does not exceed the “double wage / 25% turnover” limits applicable for guarantees (see above).²⁹ For loans with a maturity until 31 December 2020, the amount of the loan principal may be higher with appropriate justification.

As a result of the second amendment of the Temporary Framework of 8 May 2020, subordinated debt³⁰ may also be approved by the Commission under certain conditions:

- (i) Credit risk mark-up added as compared to loans with subsidised interest rates (i.e. plus 200 bps for large enterprises and 150 bps for SMEs);
- (ii) Limitation of the amount of subordinated debt compared to senior debt (i.e. one third for large enterprises and half the amount for SMEs); and
- (iii) Limitation of the overall amount of subordinated debt per beneficiary (i.e. two thirds of the annual wage bill of the beneficiary for large enterprises and the annual wage bill for SMEs, or 8.4% of the beneficiary’s total turnover in 2019 for large enterprises and 12.5% for SMEs).

The Commission has indicated that, if such subordinated debt does not comply with the conditions set out in section 3.3 of the Temporary Framework, such measure would need to be assessed under the stricter recapitalization conditions set out in section 3.11 (see below).

²⁸ https://ec.europa.eu/competition/state_aid/legislation/reference_rates.html

²⁹ In addition, for the credit risk margin applicable to SMEs for a 1-3 year maturity loan, the minimum all-in interest rate (base rate plus the credit risk margins) should be at least 10 bps per year.

³⁰ Debt which is subordinated to ordinary senior creditors in the case of insolvency proceedings (paragraph 26).

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Section 3.5 – Aid related to short-term export credit insurance

With respect to short-term export credit insurance (Section 3.5), which is already covered by European legislation,³¹ the Commission acknowledges that, due to the Covid-19 crisis, cover for marketable risks could be temporarily unavailable in certain countries, which may justify public intervention. As a result of the amendment of the Temporary Framework of 4 April 2020, this is available for all countries, without the need for the Member State to demonstrate that the respective country is temporarily “non-marketable.”

Section 3.6 - Support for coronavirus related R&D

Since the first amendment to the Temporary Framework of 4 April 2020, Member States can grant aid in the form of direct grants, repayable advances or tax advantages for Covid-19 and other relevant antiviral R&D (a bonus may be granted for cross-border cooperation projects).

Section 3.7 – Support for the construction and upscaling of testing facilities

Since the first amendment to the Temporary Framework of 4 April 2020, Member States can grant aid in the form of direct grants, tax advantages, repayable advances and no-loss guarantees to support investments enabling the construction or upscaling of infrastructures needed to develop and test products useful to tackle the Covid-19 outbreak, up to first industrial deployment³² (companies can benefit from a bonus when their investment is supported by more than one Member State and when the investment is concluded within two months after the granting of the aid).

Section 3.8 – Support for the production of products relevant to tackle the Covid-19 outbreak

Since the first amendment to the Temporary Framework of 4 April 2020, Member States can grant aid in the form of direct grants, tax advantages, repayable advances and no-loss guarantees to support investments enabling the rapid production of Covid-19-relevant products (companies may benefit from a bonus when their investment is supported by more than one Member State and when the investment is concluded within two months after the granting of the aid).

Section 3.9 – Targeted support in the form of deferral of tax payments and/or suspensions of social security contributions

Since the first amendment to the Temporary Framework of 4 April 2020, in order to further reduce the liquidity constraints on companies due to the Covid-19 crisis and to preserve employment, Member States can grant targeted deferrals of

³¹ Communication from the Commission of 19 December 2012 on short-term export-credit insurance (OJ C 392, 19.12.2012, p.1-7).

³² These include medicinal products (including vaccines) and treatments, medical devices and equipment (including ventilators and protective clothing, as well as diagnostic tools), disinfectants, data collection and processing tools useful to fight the spread of the virus.

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payment of taxes and of social security contributions in those sectors, regions or for types of companies that are hit the hardest by the outbreak.

Section 3.10 – Targeted support in the form of wage subsidies for employees

Since the first amendment to the Temporary Framework of 4 April 2020, in order to help limit the impact of the Covid-19 crisis on workers, Member States can contribute to the wage costs of those companies in sectors or regions that have suffered most from the Covid-19 outbreak, and would otherwise have had to lay off personnel. This aid is subject to the condition that (i) the wage subsidy is granted over a period of not more than 12 months after the application for aid, for employees that would otherwise have been laid off and subject to the condition that the benefitting personnel is maintained in continuous employment, (ii) the monthly wage subsidy shall not exceed 80% of the monthly gross salary (including employer's social security contributions) of the benefitting personnel³³ and (iii) the combined support³⁴ does not lead to overcompensation of the wage costs of the personnel concerned.

Section 3.11 – Recapitalisation measures in the form of equity and/or hybrid capital instruments

As a result of the second amendment to the Temporary Framework of 8 May 2020, the Commission has added a new, much debated section on recapitalisation measures in the form of equity and/or hybrid³⁵ capital instruments (Section 3.11), which can be part of schemes or individual measures. Interestingly, the Commission encourages the design of national support measures in a way that meets the EU's policy objectives related to green and digital transformation of their economies. Such measures, which are by definition of a longer-term nature than the ones listed above, and must be at the written request of the beneficiary, need to meet the following main conditions to be declared compatible by the Commission:

- (i) By derogation to other measures contemplated in the Temporary Framework, recapitalisation measures shall not be granted later than 30 June 2021;
- (ii) All individual aid above EUR 250 million must be notified (even if part of an already- approved scheme);

³³ Member States may also notify, in particular in the interest of low-wage categories, alternative calculation methods of the aid intensity, such as using the national wage average or minimum wage, provided the proportionality of the aid is maintained.

³⁴ Wage subsidies may be combined with other generally available or selective employment support measures, and may further be combined with tax deferrals and deferrals of social security payments.

³⁵ According to the Commission, hybrid capital instruments are instruments that have characteristics of debt as well as of equity. For instance, convertible bonds are remunerated like bonds until they are converted into equity. The assessment of the overall remuneration of hybrid capital instruments thus depends on the one hand on their remuneration while they are debt-like instruments and on the other hand on the conditions for conversion into equity-like instruments.

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- (iii) It must be demonstrated that, without public intervention, the beneficiary would go out of business (or would face serious difficulties to maintain its operations) and the beneficiary is not able to find financing on the markets at affordable terms (while existing horizontal measures at the national level must also be insufficient to cover its liquidity needs);
- (iv) It must also be in the common interest of the Member State to intervene, i.e. to avoid 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);
- (v) In any event, Covid-19 recapitalisations must not exceed the minimum needed to ensure the viability of the beneficiary, and should not go beyond restoring the capital structure of the beneficiary pre-crisis. Importantly, in assessing the proportionality of the measure, other State aid received (or planned) in the context of the crisis shall be taken into account;
- (vi) The Member State must receive adequate remuneration:
 - a. *For equity instruments:*
 - i. Capital injection: at the average share price of the beneficiary over the last 15 days (or by independent expert if company not listed);
 - ii. Buy-back by the beneficiary: price should be the higher amount of the nominal investment by the State increased by an annual interest remuneration 200 basis points higher than for hybrid instruments (see table below), and of the market price at the moment of the buy-back;
 - iii. Sale to third parties: at market prices, following an open and non-discriminatory consultation of potential purchasers (or sale on the stock exchange). The State may give existing shareholders priority rights.

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b. *For hybrid instruments:*

- i. Until conversion: remuneration at least equal to 1 year IBOR (or equivalent as published by the Commission), plus the following premium:

Beneficiary	Year 1	Years 2-3	Years 4-5	Years 6-7	Year 8
SMEs	225 bps	325 bps	450 bps	600 bps	800 bps
Large enterprises	250 bps	350 bps	500 bps	700 bps	950 bps

- ii. At conversion into equity: price 5% or more below the so-called theoretical ex-rights price (TERP) at the time of the conversion;

(vii) A so-called “step-up mechanism” shall also be included to encourage the State’s exit:

- a. *For equity instruments*: additional shares granted to the State (or equivalent measure) corresponding to a minimum of 10% increase in the remuneration of the State after 4 years (if the State has not sold at least 40% of its Covid-19 equity injection), and then again after 6 years (if the State has not sold in full its Covid-19 equity injection) (for unlisted companies, after 5 and 7 years respectively). The Commission may consider alternative mechanisms;
- b. *For hybrid instruments*: same mechanism as above (i.e. additional shares corresponding to a 10% remuneration increase) if the State has not sold its Covid-19 equity injection 2 years after the conversion.

(viii) If 6 years (7 years for SMEs and non-listed companies) after the Covid-19 recapitalisation the State’s intervention has not been reduced below 15% of the beneficiary’s equity, a restructuring plan (in accordance with the Commission’s Rescue and Restructuring Guidelines; see below) must be notified to the Commission for approval. The Commission has indicated that, in such a case, it may take into account EU objectives and national obligations linked to the green and digital transformation.

(ix) Additionally, a series of governance measures must be followed by the beneficiary:

- a. As long as the Covid-19 recapitalisation has not been fully repaid, the beneficiary cannot make dividend payments, non-mandatory coupon payments, or buy-back shares (other than in relation to the State);
- b. As long as at least 75% of the Covid-19 recapitalisation has not been repaid, the remuneration of each member of the management must not go beyond its fixed remuneration as of 31 December 2019 (or, for

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new members, the lowest fixed remuneration of the management), and no bonuses (or other variable remuneration) can be paid;

- c. As long as at least 75% of the Covid-19 recapitalisation has not been repaid, the beneficiary (other than SMEs) are prevented from acquiring a stake of more than 10% in competitors (or other operators in the same line of business, including upstream and downstream), unless necessary to maintain the beneficiary's viability;
 - d. Recapitalisation cannot be used to cross-subsidise other economic activities that were in difficulty on 31 December 2019 (to that effect, clear account separation shall be put in place in integrated companies);
 - e. Need to consider offering structural or behavioral commitments (in the sense of EU merger control) if the aid is above EUR 250 million and the beneficiary has significant market power in at least one of its relevant markets; and
 - f. The beneficiary cannot advertise the receipt of the aid for commercial purposes.
- (x) A beneficiary (other than SMEs) that has received a Covid-19 recapitalisation of more than 25% of its equity must demonstrate a credible "exit strategy" which should be submitted to the Member State within 12 months (unless the State's new injection is reduced below 25% within 12 months). This exit strategy shall lay out: a plan on the continuation of the beneficiary's activity and the use of the State's funds (including a payment schedule of the remuneration and repayment of the State investment), as well as the measures undertaken to abide by this schedule. The beneficiary must report annually to the Member State on progress and use of the aid, while the Member State should, in turn, report periodically to the Commission.

With respect to all aid described above, Member States will generally have to publish relevant information on each individual aid grant under the Temporary Framework within 12 months of granting (3 months for recapitalisations under Section 3.11).

2.3. Article 107(3)(c) TFEU: Aid to companies facing acute liquidity needs and/or facing bankruptcy due to COVID-19 outbreak

Article 107(3)(c) TFEU, which targets the rescue and restructuring of distressed companies,³⁶ enables Member States to meet acute liquidity needs and support companies facing bankruptcy "due to or aggravated by" the Covid-19 outbreak.

³⁶ Guidelines from the European Commission on State aid for rescuing and restructuring non-financial undertakings in difficulty, 31 July 2014 (2014/C 249/01) (the "Rescue and Restructuring Guidelines").

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Rescue measures, which are temporary liquidity support to cover the company's expected operating needs (including loan and guarantees), are compatible provided that they meet a certain number of conditions, including:

- (i) any loan must be reimbursed and any guarantee must come to an end within 6 months (18 months for SMEs);
- (ii) a "normal" remuneration for the loans and/or guarantees has to be paid by the beneficiary.³⁷

Restructuring measures involve more permanent assistance in order to restore the long-term viability of the beneficiary. They are compatible provided that they meet a certain number of conditions, including:

- (i) The Member State must submit a "feasible, coherent and far-reaching" restructuring plan to restore the beneficiary's long-term viability (including, typically, financial restructuring in the form of capital injections by new or existing shareholders and debt reduction by existing creditors);
- (ii) If Member States are free to choose the form of the restructuring aid, they must ensure that it is appropriate to the issue addressed (e.g. in the case of solvency problems, increasing assets through recapitalisation might be appropriate, whereas in a situation where the problems mainly relate to liquidity, assistance through loans or loan guarantees might be sufficient);
- (iii) The amount and intensity of restructuring aid must be limited to the strict minimum necessary to enable restructuring to be undertaken (in particular, a sufficient level of own contribution to the costs of the restructuring and burden sharing with other creditors or shareholders must be ensured).

The Commission has indicated that companies that are not yet in difficulty can also receive such support if they face acute liquidity needs due to the COVID-19 outbreak.³⁸

³⁷ Reference rate set out by the European Commission for weak undertakings offering normal levels of collateralization (Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6)).

³⁸ Communication from the European Commission, *Coordinated economic response to the COVID-19 Outbreak*, 13 March 2020, Annex 3.

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