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Competition Flash

March 2020

EU Commission's Temporary Framework for State aid measures in relation to COVID-19

*On 19 March 2020, the EU Commission published the communication "Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak" (the "Temporary Framework").[1] The Commission acknowledged that the current situation in the EU Member States constituted **a serious disturbance in the economy of a Member State within the meaning of Article 107(3)(b) of the Treaty on the Functioning of the EU**, and provided for conditions under which it will be ready, **upon a Member State's request**, to **promptly approve State aid programmes (as it has done so within 24 hours in the case of Denmark[2])** as well as any possible individual public aid **provided until the end of 2020**. These aid measures may be only provided to undertakings that were **per definition not in difficulty[3] as at the end of 2019**.*

Under the Temporary Framework, the following types of aid **may be mutually cumulated to compensate for a sudden shortage of liquidity:**

1) Direct grants, selective tax advantages and repayable advances:

The Member States may establish programmes enabling the provision of aid not exceeding **EUR 800,000 (i.e. some CZK 21.6 million) per one undertaking**. Specific conditions and caps of EUR 100,000-120,000 apply for agricultural undertakings.

2) State guarantees on loans with maturity of up to 6 years:

A State guarantee must be provided at least for **minimum consideration** graduated from **0.25%** for one-year maturity loans for SMEs to **2%** for up to 6-year loans for large enterprises. For loans with a maturity beyond 2020, the amount of the loan principal may not exceed (i) **the double of the annual wage bill of the beneficiary including social charges** (and including the cost of subcontractors' personnel working on the undertakings site), or (ii) **25% of the total turnover of the beneficiary in 2019**. Higher amounts may be provided to cover liquidity needs (working capital and investment costs) for a limited period of 18 months for SMEs and 12 months for large enterprises. A State guarantee may be provided for up to 90% of the loan principal if losses are sustained proportionally, or 35% of the loan principal, where losses are first attributed to the State.

3) Subsidised interest rates for loans with maturity of up to 6 years:

The minimum interest is also graduated in the form of margins (from **0.25%** for one-year maturity loans for SMEs to **2%** for six-year maturity loans for large enterprises) added to the basic rate published by the Commission for individual Member States (**2.25%** is currently applicable to the Czech Republic). Subsidised loan principal amounts are set with similar limitations as the State guarantees under 2) above.

4) State guarantees and subsidised loans channelled through banks and other financial institutions:

Under the Temporary Framework, State guarantees for loans as specified in 2) and subsidised loans as specified in 3) above will be provided directly or through banks and other financial institutions. In the latter case, the financial institutions must ensure that advantages are passed on to the final beneficiaries to the largest extent possible and that they do not constitute an advantage to the financial institutions.

5) Short-term export credit insurance:

Under usual circumstances, marketable risks cannot be covered by export-credit insurance with the support of Member States (in the Czech Republic under Act No. 58/1995 Sb.). If the Commission is given evidence that otherwise marketable risks cannot be currently insured due to the COVID-19 pandemic, such risks may be covered with State aid.

The aforementioned conditions do not apply to **non-selective aid provided to all undertakings**, e.g. deferral of payment for taxes and other mandatory levies, State contributions for compensation in lieu of salaries and wages, as this is not public aid. The Member States may naturally also avoid the duty to notify State aid to the EU Commission if they provide public aid in compliance with the **General Block Exemption Regulation (GBER)**.

Should you have any other questions regarding this topic, do not hesitate to contact our legal team.

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[1] *Communication from the Commission dated 19/03/2020, C(2020) 1863 final https://ec.europa.eu/competition/state_aid/what_is_new/sa_covid19_temporary-framework.pdf.*

[2] *Commission SA.56685 (2020/N) – DK – Compensation scheme for cancellation of events related to COVID-19 https://ec.europa.eu/competition/state_aid/cases1/202011/285054_2139535_70_2.pdf.*

[3] *According to the definition set forth in Article 2(18) of Commission Regulation No. 651/2014 on general block exemptions (GBER). This includes, in particular, an undertaking which filed for insolvency and an undertaking with accumulated losses that qualify as having exceeded its capital. Member States may compensate under Article 107(2)(b) TFEU the damage caused in relation to COVID-19 to undertakings that received aid as undertakings in difficulty earlier.*

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