

Alerts & Publications

Flexibility of EU State Aid Rules in Response to COVID-19 Impact

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The European Commission (EC) has vowed to support aid schemes that several EU Member States are developing to help businesses affected by the ongoing COVID-19 outbreak.¹

Acknowledging the hardship companies are facing, the EC has expressed its willingness to apply EU State aid rules with flexibility in this time of crisis.

According to Margrethe Vestager, the EC's Executive Vice-President and Commissioner for Competition, the EC's goal is to "*make sure that businesses have the liquidity they need to keep operating.*" Hence, the EC will "*enable Member States to use the full flexibility foreseen under State aid rules to tackle this unprecedented situation*" and will also "[make] sure that [EC] decisions can be taken very fast."

There are already several mechanisms, under existing EU State aid rules, allowing Member States to help businesses under certain conditions, including, for example, wage subsidies as well as the suspension of corporate and value added tax obligations or social levies. Member States can also help companies cope with liquidity shortages and in need of urgent rescue aid. Another option is for public authorities to grant financial support directly to consumers (e.g. for cancelled services or tickets not reimbursed by the providers).

To complement these existing tools, on March 19, 2020, the EC adopted a [Temporary Framework](#) for State aid measures. It is based on Article 107(3)(b) of the Treaty on the Functioning of the European Union (TFEU), which empowers the EC to approve aid that is meant "*to remedy a serious disturbance in the economy of a Member State.*" The Temporary Framework recognizes that "*the entire EU economy is experiencing a serious disturbance.*" Accordingly, it applies to all companies in all Member States which, as a result of the COVID-19 outbreak, entered into difficulty after December 31, 2019. It will be in place until the end of 2020, with a possibility for extension.

Specifically, the Temporary Framework enables Member States to: (i) set up schemes of direct grants, tax advantages, or advance payments of up to €800,000 to a company, (ii) give subsidized State guarantees on bank loans, (iii) grant public loans with subsidized interest rates, (iv) give short-term export credit

insurance, and (v) grant aid in the form of guarantees and loans channeled through credit institutions or other financial institutions to final customers, in particular SMEs.

In addition, the EC [indicated](#) that the COVID-19 crisis also qualifies as an “*exceptional occurrence*” within the meaning of Article 107(2)(b) TFEU, with the consequence that compensation for losses could be allowed under EU State aid rules. Commissioner Vestager clarified that, exceptionally, support could be offered on the basis of that provision even if companies received rescue aid in the last 10 years (*i.e.* the “*one time last time*” principle will not apply). She named the airline industry as one of the sectors that could benefit from such measures.

The EC also announced that it would publish templates providing guidance on allowed aid schemes. The regulator already published one such [template](#) on March 17, 2020, aimed at facilitating the design of measures under Article 107(2)(b) TFEU and listing commitments applicants must make to be eligible for the aid. It is understood that the EC will publish another template in the next days in the form of a checklist allowing Member States to notify aid schemes meeting the criteria of the Temporary Framework.

The EC also provided [guidance](#) on the way Member States can offer liquidity support to companies hit by the crisis and setting out the various types of compensations companies may receive under EU State aid rules.

Demonstrating its willingness to expedite the approval process of support schemes relating to the COVID-19 outbreak, the EC has already validated 12 such State aids. On March 12, 2020, the EC approved the first State aid under Article 107(2)(b) TFEU. With this aid, a EUR 12 million support scheme, Denmark will compensate damages caused by cancellations of large public events due to the COVID-19 outbreak. Similar to the speedy review of State aid cases during the 2008 financial crisis, the aid was notified and approved within 24 hours.

At the time of writing, the EC has also approved 11 aid programs under the Temporary Framework, validating support measures in Denmark, France, Germany, Italy, and Portugal worth more than EUR 300 billion in loans, guarantees, and direct grants.

In line with the assurance given by Commissioner Vestager that the EC would “*work closely and quickly with [Member States] to help them provide the support which the economy needs,*” some dedicated mailbox and phone line have been set up by the EC to help public authorities throughout the process. It was also reported that, just like it did during the 2008 financial crisis, the EC is currently reinforcing its State aid teams to help manage the additional workload created by the incoming State aid demands.

At O'Melveny, our antitrust experts are experienced in appraising and managing State aid cases. Our in-depth understanding of how the EC and other agencies around the world work, and our established relationships with these agencies' staff, enable us to help our clients navigate through the challenges that the

COVID-19 crisis poses to their businesses. Should your company or its subsidiaries consider requesting financial aid or other support from an EU Member State due to the COVID-19 crisis, do reach out to us so that we can assist you in devising the best antitrust strategy.

¹ Under the EU Withdrawal Agreement, EU State aid rules will continue to apply to the UK until December 31, 2020.

This memorandum is a summary for general information and discussion only and may be considered an advertisement for certain purposes. It is not a full analysis of the matters presented, may not be relied upon as legal advice, and does not purport to represent the views of our clients or the Firm. Riccardo Celli, an O'Melveny partner licensed to practice law in England and Wales and Italy, Christian Peeters, an O'Melveny of counsel licensed to practice law in Germany and Belgium, and Maude Vonderau, an O'Melveny counsel licensed to practice law in Belgium, contributed to the content of this newsletter. The views expressed in this newsletter are the views of the authors except as otherwise noted.

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