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Insight

Commission Adopts Temporary Framework on State Aid to Tackle Effects of Credit Crisis on the Real Economy

In its "European Recovery Plan" of 26 November 2008, the Commission set out its views on what is needed for Europe to recover from the current financial crisis: a major injection of purchasing power into the economy and immediate incentives for "smart" public sector spending to reinforce Europe's competitiveness in the long term.

Following on from two specific Communications related to the financial sector, the Communication on a Temporary framework for State aid measures to support access to finance in the current financial and economic crisis ("[Temporary Framework](#)") is the Commission's first response to the difficulties faced by the 'real economy' beyond the financial sector.

While recent State aid measures have been aimed at ensuring greater access to liquidity for financial institutions and improving interbank lending, normal lending activities to other sectors of the economy have not necessarily benefitted from these measures.

This new Framework provides a temporary slackening of the conditions under which Member States can grant subsidised loans, loan guarantees at a reduced premium, risk capital for SMEs and direct aids of up to €500,000 to individual companies.

The first part summarises the existing instruments at the State's disposal to relieve companies' financial difficulties. The second part lays down the particular categories of State aid for the wider economy which may be permitted, exceptionally and until 2010. These are justified under Article 87(3)(b) EC, which allows State aid to remedy a serious disturbance in the economy of a Member State.



The Brussels office of White & Case represents State aid beneficiaries or potential beneficiaries, complainants (competitors of companies granted aid) and national authorities in investigation procedures before the European Commission and the national or European Courts.

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While the focus is on measures in support of SMEs and green projects, larger companies may also stand to benefit from subsidised loan guarantees. Specifically the Communication provides that Member States may grant, under certain conditions:

- a) **grants up to €500,000** per company over two years, unrestricted by State aid rules;
- b) **subsidised loan guarantees** for a limited period to SMEs through a reduction of up to 25% of the annual premium for new guarantees. For larger companies this reduction is limited to 15%;
- c) **low interest loans for “green projects”** aimed at adapting earlier to standards not yet in force or going beyond such standards;
- d) **risk capital aid** up to €2.5 million per SME per year (instead of the current €1.5 million).

As concerns **short-term export credit insurance** the Commission has relaxed the evidence requirements, in an attempt to speed up the approval of aids. Until 31 December 2010 Member States may demonstrate the lack of a market by providing sufficient evidence of the unavailability of cover for the risk in the private insurance market.

It remains to be seen whether Member States take up these possibilities, and whether these measures will be sufficient to address the problems which companies in the wider economy are facing.

Besides the fact that not all companies can benefit from these measures, the provisions of the Temporary Framework as regards aid in the form of guarantees and subsidized loans are not applicable to ‘firms in difficulty’, as defined in the Guidelines on State aid for rescuing and restructuring firms in difficulty (“[R&R Guidelines](#)”). These Guidelines are being reviewed by the Commission and the outcome may be a more flexible approach to State aid in favour of ‘firms in difficulty’, given the impact of the financial crisis. The Commission regards a firm as being in difficulty where it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to going out of business.

The Temporary Framework does not shed light on other issues of concern for major companies, such as their need to refinance existing debt or corporate bonds when current arrangements mature. In a time of credit rationing, even viable businesses may not have sufficient access to conventional sources of credit. The Framework does not address this, which could prove to be a major shortcoming. For the time being, the Member State as lender of last resort would have to apply the current R&R Guidelines, which impose a number of strict conditions on such aid, notably that the beneficiary company repay the aid or restructure within six months.