State aid response to COVID-19 crisis

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As the number of businesses around the EU affected by the COVID-19 outbreak grows, many Member States are considering or have announced substantial supporting packages in an effort to limit the impact of the outbreak on the economy. Across the EU, measures vary, from governmental loans and guarantees to deferral of tax and social contributions, all of which could be a form of State aid, which usually requires approval from the European Commission before it is implemented.

The Commission has announced that, in the time of crisis, it will show flexibility "*to ensure that State aid can flow to companies that need it*". Pending more detailed State aid guidelines and recommendations, which are currently being prepared, the Commission has already issued a short one-page presentation, which summarises the ways in which companies experiencing COVID-19-related hardship may seek help from the respective governments and how such assistance will be assessed under the current State aid rules. Last week, the Commission approved the first COVID-19-related State aid notification submitted by Denmark, and, similarly to the financial crisis days, it approved it within 24 hours of the notification.

White & Case provides an overview of the EU State aid rules, which the Member States and companies affected could rely on to soothe the impact of COVID-19 on the economy.

For companies struggling with the impact of COVID-19, Commission President Ursula von der Leyen's statement about using all tools at the Commission's disposal to support the European economy will have been a welcome sight. As part of her pledge to coordinate an effective EU-level response to COVID-19, President von der Leyen has assured business and citizens that the Commission is working to "*make sure that State aid can flow to companies that need it".* In a further statement on Friday, Executive Vice President of the Commission Margrethe Vestager set out the Commission's strategy for tackling the interplay between the State aid rules and Member States' need to react quickly to the effects of COVID-19. To that end, she recognised that "*Governments may need to give State aid on a much larger scale. And our rules allow for* *wide-ranging support, throughout the economy, in Member States that are facing a serious disturbance to their economies*".

In order to expedite the State aid procedure, the Commission has already established a dedicated "hotline" and mailbox as well as a "State aid and COVID-19" web page that includes guidance on how Member States can quickly provide liquidity to affected undertakings. All necessary procedural facilities have been put in place to enable the Commission to expedite approvals for notified State aid, including a commitment to take decisions "*within days of receiving a complete State aid notification from Member States, where necessary*".

Already on Thursday, Denmark became the first Member State to notify a COVID-19 State aid measure, with a €12 million scheme to compensate event organisers for events that have had to be cancelled in Denmark due to the outbreak, which obtained the Commission's approval under Article 107(2)(b) TFEU within 24 hours of its notification.

While the Commission is also expected to publish a new framework for COVID-19 State aid measures shortly, it has already issued a short one-page presentation, which summarises the way in which companies experiencing liquidity problems may seek help from governments and the way in which the support may be assessed under the State aid rules. The summary envisages three avenues of support:

1. Support that is not State aid

   Member States have a range of options to increase liquidity of affected companies that do not qualify as State aid, and do not require State aid approval from the Commission. These include:

   - State measures available to all companies such as the extension of payment deadlines for corporate tax or social contributions, as they do not provide a selective advantage to specific companies;
   - The provision of loans or State guarantees at market rates;
   - Support that is below the thresholds set by the De Minimis Regulation. This can include aid of up to €200,000 over three years in most sectors, subsidised loans of up to €1 million, and subsidised guarantees for loans of up to €1.5 million.

   Similarly, aid to citizens and to health services or other public services coming from EU or national funds to tackle COVID-19 does not qualify as State aid and can be granted without Commission approval.

2. Support in line with the State aid rules

   Member States may of course always provide support in line with the *de minimis* rules, the General Block Exemption Regulation (GBER) or grant rescue aid in line with the Rescue and Restructuring Guidelines.

   The Commission has further directed Member States to apply Article 107(2)(b) TFEU, which enables Member States to compensate companies for the damage directly caused by exceptional occurrences such as COVID-19, including measures in sectors such as aviation and tourism. Should the impact of COVID-19 become particularly grave, Member States may also rely on Article 107(3)(b) TFEU, which allows Member States to grant State aid to "*remedy a serious disturbance in the economy of a Member State*". According to the Commission, the provisions of Article 107(3)(b) TFEU would allow Member States to meet acute liquidity needs and support companies facing bankruptcy due to the COVID-19 outbreak.

   While Member States are encouraged to implement aid in the form of schemes and under the GBER, which require no individual State aid approval, further tailor-made measures for specific companies requiring an individual notification may be envisaged.

   The Commission has announced that it will deal quickly with any notifications, as illustrated by its approval of the first case within 24 hours of notification.

   a. SME schemes

Member States which intend to support SMEs may do so by putting in place a dedicated State aid scheme, which only requires a single notification and approval. Such schemes could provide for rescue aid as defined under the Rescue and Restructuring Guidelines, and provide support, for example, to SMEs facing liquidity shortages for up to 18 months.

b. Individualised support to large companies

For State support to larger undertakings, Member States will regularly need to submit individual notifications to the Commission for approval.

3. Outlook

Companies hit by the COVID-19 crisis may approach their respective governments in order to rely on support in line with the above guidance.

That said, as restrictive measures to contain the virus are likely to continue to be in place for a significant time (and may even be intensified), the current proposals may not be sufficient and a more substantive package could be required to adequately address the consequences. Moreover, with continued strain on the real economy, knock-on effects on the banking sector cannot be excluded. These may require an adaptation of the current post-crisis regime, including the State aid rules applicable in the sector and the respective regulatory regime such as the BRRD.

Against this background, today (Tuesday, March 17) the Commission proposed to the Member States the adoption of a temporary Framework allowing for inter alia (i) schemes enabling direct grants (or tax advantages) up to €500,000 to a company, (ii) subsidised State guarantees on bank loans, and (iii) public and private loans with subsidised interest rates. The Temporary Framework is supposed to be in place within a few days.

All stakeholders are well advised to closely follow developments and make known their concerns in order to ensure that business needs are met with an adequate response by regulators and policy makers.

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