

## Support measures related to COVID-19 and State aid rules

### 1. Introduction

Following the first reports of cases of acute respiratory syndrome (COVID-19) in the Chinese Wuhan municipality at the end of December 2019, the Chinese authorities have identified a novel coronavirus (SARS-CoV-2) as the main causative agent, which had not been previously identified in humans. The outbreak has rapidly evolved affecting not only other parts of China but has also spread to the majority of countries worldwide, including almost all EU Member States.<sup>1</sup> The WHO has declared the risk that COVID-19 will spread and have a global impact to be very high.

Outbreaks of novel virus infections among people are always of public health concern and can have a significant economic impact. Due to the current COVID-19 outbreak, GDP growth projections are being revised downwards, including for the EU Member States. Specific sectors and areas are particularly affected by the outbreak, be it because of national outbreak control measures, travel restrictions or supply chain disruptions.

Several Member States are considering, or have already announced, measures to support citizens and companies facing difficulties due to the outbreak. This paper is intended to give some initial guidance as to the possibilities under the existing State aid framework to provide such support. This is an emerging, rapidly evolving situation. The present document may therefore be further updated depending on further developments.

### 2. Measures which do not constitute State aid<sup>2</sup>

#### 2.1. Public remit measures

Financial support from EU or national funds granted to health services or other public services to tackle the COVID-19 situation normally represents an exercise of public power and therefore falls outside the scope of State aid control.

#### 2.2. Non-selective measures

Member States are free to use general policy measures, applicable to all companies on their territories, with the aim of temporarily alleviating financing problems. Such general measures normally fall outside the scope of the State aid rule provided they are open to all undertakings in the Member State concerned.

For example, Member States could extend payment deadlines for social security and similar charges, or even taxes, for all companies. They could also introduce measures to benefit all employees.

Member States may also grant financial support directly to consumers. Provided such support is indeed granted to individual consumers and without discrimination based on the origin of products, it normally does not constitute State aid.

---

<sup>1</sup> As of 5 March 2020, Slovakia, Cyprus and Malta have not reported any confirmed cases to the WHO.

<sup>2</sup> The Commission has published extensive guidance as to the definition of State aid in its Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (**Notice on the Notion of Aid**), OJ C 262, 19.7.2016, page 1

### 2.3. Union funding

Moreover, general Union programmes that are centrally managed by the EU may be used to deliver support to SMEs, but also to large undertakings. Such programmes do not constitute State aid as long as Member States are not taking the decision on the allocation of support to beneficiaries themselves.

### 2.4. *De minimis* support

Furthermore, smaller amounts of support can be provided under the so-called *de minimis* regulation<sup>3</sup> without qualifying as State aid.

The total *de minimis* aid that can be granted to any one undertaking is capped at EUR 200 000 (EUR 100 000 in the road transport sector) over any period of three fiscal years.

### 2.5. Measures having a purely local impact

Support measures that have a purely local impact and consequently have no effect on trade between Member States do not constitute State aid.<sup>4</sup> This is the case when the beneficiary supplies goods or services to a limited area within a Member State, is unlikely to attract customers from other Member States, and it cannot be foreseen that the measure will have more than a marginal effect on the conditions of cross-border investments or establishment.

### 2.6. Financing at market conditions

Access to finance is possible in various formats, e.g. through State-financed lending schemes or State guarantees handed out on market terms.

The Commission has issued specific guidance on how to ensure that such financing does not constitute State aid:

- Aid-free loans, in particular for SMEs, can be granted using the market price proxies set out in the Reference rate communication<sup>5</sup>.
- The notice on guarantees<sup>6</sup> specifies the conditions under which public guarantees for loans do not constitute State aid. In accordance with that notice, guarantees are not considered State aid, in particular, when a market price is paid for them. Besides clarifying the conditions determining whether or not aid in the form of guarantees is present, the notice also introduces specific safe-harbour premiums for SMEs, facilitating the use of guarantees in order to foster the financing of SMEs.

In addition, Member States can provide market conform financing *pari passu* with private operators or based on market benchmarks, for instance under the remit of their national promotional banks.

---

<sup>3</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, OJ L 352, 24.12.2013, p. 1–8

<sup>4</sup> The Notice on the Notion of Aid provides further guidance and case practice on how to apply this principle.

<sup>5</sup> Communication from the Commission on the revision of the method for setting the reference and discount rates, OJ C 14, 19.1.2008, page 6

<sup>6</sup> Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, OJ C 155 of 20.06.2008, page 10

### 3. Measures which constitute State aid

#### 3.1. General Block Exemption Regulation (GBER)

The GBER allows Member States to grant certain types of State aid without prior notification to the Commission<sup>7</sup>. However, most categories of aid covered by the GBER relate to particular investments and activities that do not appear relevant for the immediate support needs triggered by the COVID-19 outbreak.

A GBER provision that could be used to provide financing at reduced rates to certain small enterprises is Article 22 of the GBER regarding aid to start ups.

#### 3.2. Temporary liquidity support

The Rescue and Restructuring Guidelines<sup>8</sup> contain provisions on temporary restructuring support schemes for SMEs and smaller State-owned enterprises allowing liquidity assistance that is limited both in amount and in time (up to 18 months). This could be particularly useful to address acute liquidity problems caused by the COVID-19 outbreak. Such temporary restructuring support may also be granted to undertakings that are not in difficulty provided they are facing acute liquidity needs due to exceptional and unforeseen circumstances. The Commission stands ready to approve any scheme notified under these provisions at short notice. A number of Member States already have such schemes in place.

#### 3.3. Rescue aid

The Rescue and Restructuring Guidelines set out conditions for rescue aid. They allow undertakings, irrespective of their size and even if not in difficulty where they face acute liquidity needs due to exceptional and unforeseen circumstances, to receive urgent and temporary assistance in the form of loan guarantees or loans, limited to a 6 months period. Other conditions, notably with regard to the level of remuneration that the beneficiary is required to pay, must be complied with.

#### 3.4. Article 107(2)(b) TFEU – exceptional occurrences

Under Article 107(2)(b) TFEU, aid to make good the damage caused by natural disasters or exceptional occurrences shall be compatible with the internal market.

In order to qualify as an exceptional occurrence, an event must be (i) unforeseeable or difficult to foresee; (ii) of significant scale/economic impact; and (iii) extraordinary, i.e. differ sharply from the conditions under which the market normally operates. The characterisation of any particular event is made by the Commission on a case-by-case basis. In most cases, exceptional occurrences that have been accepted include both the triggering event<sup>9</sup> itself and the ensuing ban or prohibition decided by the competent authorities<sup>10</sup>. The Commission has not yet made any such assessment for the COVID-19 outbreak.

---

<sup>7</sup> 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 Treaty, OJ L 187 26.6.2014, page 1

<sup>8</sup> Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249, 31.7.2014, page 1

<sup>9</sup> E.g. terrorist attack, chemical contamination, industrial accident, oil spill, etc.

<sup>10</sup> E.g. prohibiting access to the airspace, requirement on producers to withhold or withdraw their products from the market.

## COMP Operations

Article 107(2)(b) TFEU only covers compensation for damage directly caused by the exceptional occurrence. Therefore, there must be a **direct causal link** between the aid and the damage resulting from the exceptional occurrence for every single beneficiary. Any aid must be **limited to what is necessary** to make good the damage. In particular, only the products/services directly affected by the exceptional occurrence are eligible for aid, and any payment due, for example under insurance policies, should be deducted from the amount of aid. Aid granted under this provision can in principle cover both the costs of repairing the material damage (if any) and any economic loss suffered. However, such aid may not be used to cover normal business risks.

Measures can be targeted to assist sectors or undertakings most affected.

Any proposed measure under this provision need to be notified to the Commission. Generally, the Commission expects to be able to deal swiftly with such notifications, given that Article 107(2)(b) TFEU is an automatic compatibility ground, with a narrower margin of review.

### 3.5. Article 107(3)(b) TFEU – serious disturbance in the economy of the Member State

Under article 107(3)(b) TFEU, aid to remedy a serious disturbance in the economy of the Member State may be considered to be compatible with the internal market.

Unlike Article 107(2) TFEU, which contains a mandatory compatibility ground provided its conditions are met, Article 107(3) TFEU leaves more scope for Member States as to the type of measures which can be notified.

The Commission would need to assess the impact of the COVID-19 outbreak as sufficiently affecting the whole economy of a Member State. This assessment would in principle need to be undertaken for each Member State separately, but could also – as was done during the financial crisis – cover all Member States, if appropriate. The Commission has so far only exceptionally accepted that the conditions for the application of this provision were fulfilled.<sup>11</sup>

Unlike the strict provisions of Article 107(2)(b) TFEU, Article 107(3)(b) TFEU is not limited to compensating damage caused by a certain event. Instead, the Commission enjoys more flexibility e.g. to allow not only losses to be compensated but also the provision of liquidity or support for investments. The Commission would apply its Common Assessment Principles, in particular necessity and proportionality, to ensure that the aid is limited to the minimum necessary and to avoid overcompensation, whilst minimising competition distortions. Measures must be targeted to address the serious disturbance. Where the disruption is expected to be temporary, liquidity support measures seem more appropriate.

Member States can notify measures under this provision, in particular substantiating the serious disturbance to the whole of the national economy, and the appropriateness and proportionality of the proposed measures. Member States who are considering any such measures are invited to contact the Commission services. The Commission services stand ready to provide assistance as a matter of priority.

---

<sup>11</sup> In 1991, with regard to the privatisation programme in Greece (NN 11/91) and since 2008, with regard to the financial crisis, where the Commission adopted a series of guidelines to assess State aid to the financial sector and to the “real” economy (Temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis, initial version OJ C16, 22.1.2009, p.1)

## COMP Operations

The Commission could – if appropriate – issue a Communication setting out guidance on compatibility conditions on the basis of Article 107(3)(b) TFEU, as was done during the financial crisis (Temporary Framework).