

Amendment to the State Aid Temporary Framework to Support the Economy in the Context of the COVID-19 Outbreak

April 6, 2020

On April 3, the Commission published an amendment to its March 19 Temporary Framework (the “Amended TF”), a communication setting out a temporary framework for the implementation of less stringent State aid rules in order to support the economy in the context of the COVID-19 outbreak (the “TF”).¹ As the entire EU economy is experiencing a serious disturbance within the meaning of Article 107(3)(b) TFEU, the TF aims at ensuring that undertakings, especially SMEs, may have access to finance and liquidity despite the sudden shortage caused by the outbreak, in order to allow them to recover over time from their current difficulties. At the same time, by requiring that State aid may be granted only if necessary, appropriate, and proportionate, the TF aims at maintaining a level playing field within the internal market.

The Amended TF clarifies and further loosens the Commission’s previous guidelines on the basis of the experience gathered in the first two weeks of their application, during which dozens of decisions not to raise objections have been adopted. Moreover, under the Amended TF, Member States may now adopt additional types of aid measures that include aid to activities aimed at combating the COVID-19 outbreak, and selective measures in the form of tax and social security deferrals or wage subsidies for the sectors or regions most hit by the crisis.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors

ROME

Cesare Rizza
+39 06 6952 2237
crizza@cgsh.com

Giovanna Ciccioli
+39 06 6952 2687
gciccioli@cgsh.com

BRUSSELS

François-Charles Laprévôte
+32 22872184
fclaprevote@cgsh.com

¹ See “State Aid Temporary Framework to Support the Economy in the Context of the COVID-19 outbreak” available [here](#).



1. Clarifications and additional flexibility on the provisions of the Temporary Framework

— Combination of aid

The TF allows Member States to implement aid in four different forms: (i) direct grants, repayable advances and tax advantages; (ii) loan guarantees; (iii) subsidized loans; and (iv) short-term export credit insurance. The Amended TF provides that all these types of aid (as well as the new aid measures introduced by the Amended TF) can be combined with each other, with two exceptions:

- aid in the form of loan guarantees and aid in the form of subsidized loans cannot be cumulated for the same underlying loan, if the overall amount exceeds the relevant thresholds;
- aid aimed at supporting COVID-19 related activities cannot be cumulated if various types of aid concern the same costs.

Moreover, temporary aid measures covered by the Amended TF may also be cumulated with so-called *de minimis* aid in line with the cumulation rules respectively set out in those Regulations.²

— Aid in the form of direct grants, repayable advances or tax advantages (Section 3.1. of the TF)

Section 3.1. of the TF allowed Member States to provide up to €800,000 of aid per undertaking in the form of direct grants, repayable advances, or tax advantages. This kind of aid is particularly relevant for SMEs. The Amended TF now opens this category to equity, loans, or guarantees. In contrast with aid granted under the other sections of the TF, there is no minimal remuneration or maximal amount for the underlying loan, which means, for instance, that a

guarantee provided under this section can be granted for 100% of the underlying loan. When cumulated with the €200,000 amount of *de minimis* aid, this in practice allows Member States to provide grants or direct support to companies for an amount of up to €1 million per undertaking.

— Aid in the form of loan guarantees or subsidized loans (Sections 3.2. and 3.3. of the TF)

Sections 3.2. and 3.3. of the TF allow Member States to set up schemes for the provision of guarantees or subsidized loans in addition to aid granted under Section 3.1, subject to certain additional conditions, in particular regarding a minimal guarantee fee or interest rate level, which increases with the loan maturity.

The Amended TF clarifies that the minimal guarantee premium/interest rate need not be flat and may increase over time, as long as it remains consistent with the minimum level set out in the TF (*i.e.*, for an SME, 25 bps for the first year, 50 bps for the second and third years, and 100 bps for years four to six; these amounts are doubled for larger companies). This additional flexibility allows Member States to further reduce the remuneration rates compared with a literal interpretation of the TF.

— Aid in the form of short-term export credit insurance

In light of the drying up of the market for the provision of export credit insurance as a result of the COVID-19 outbreak, the Amended TF confirms that the Commission will deem as temporarily non-marketable (and therefore eligible for State support) all commercial and political risks related to the countries that were hitherto considered as marketable, including EU or OECD countries.³ The Commission had

² In particular *de minimis* aid which is not granted for specific eligible costs may be cumulated with other State aid granted under the General Block Exemption or a decision adopted by the Commission.

³ Communication from the Commission amending the Annex to the Communication from the Commission to

the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance (C(2020)2044, final), OJ 2020, C 101I/1).

already taken this position in a Communication adopted on March 27.⁴

2. Additional forms of aid allowed under the Amended TF

The Amended TF allows Member States to implement (subject to prior notification and clearance by the Commission) aid aimed at combating COVID-19, as well as aid aimed at preserving employment for companies particularly affected by the COVID-19 outbreak.

— **Aid aimed at combating COVID-19.** This new aid category is aimed at supporting companies that are directly involved in the fight against the COVID-19 outbreak. This category is allowed under Article 107(3)(c) TFEU, which allows the Commission to “*facilitate the development of certain economic activities or of certain economic areas*”. The Amended TF provides for three sub-categories of aid:

- Aid for COVID-19 and other antiviral relevant research and development (including vaccines, medicinal products and treatments, medical devices and hospital and medical equipment, disinfectants, and protective clothing and equipment, as well as relevant production processes for these products). The Amended TF enables Member States to grant aid in the form of direct grants, repayable advances, or tax advantages covering up to 100% of the eligible costs for fundamental research (as under the ordinary rules on aid to R&D) and 80% of eligible costs for industrial research or experimental development (as opposed to the 50-70% range applicable under the ordinary

rules).⁵ The beneficiary of the aid must commit to granting non-exclusive licences under non-discriminatory market conditions to third parties in the EEA.

- Investment aid for testing and upscaling infrastructures required to develop COVID-19 related medicinal products (such as vaccines, medical devices, and raw material, as well as data collection/processing tools). Under the Amended TF, Member States may grant aid in the form of direct grants, repayable advances or tax advantages covering up to 75% of the eligible costs. Any project supported by this type of aid must be completed within six months after the date of granting the aid, otherwise the aid shall be reimbursed.⁶ Member States may also grant a guarantee covering the investment losses, in an amount to be established five years after completion of the investment, according to the criteria set out in the Amended TF. The beneficiary of the aid must commit to charge prices corresponding to the market levels.
- Aid for the production of COVID-19 relevant products, such as medicinal products, devices or equipment, pharmaceutical ingredients, and raw materials, as well as data collection/processing tools. The Amended TF enables Member States to grant aid in the form of direct grants, repayable advances, or tax advantages covering up to 80% of the eligible costs necessary for the production and trial runs of these products. The investments supported by this type of aid must be completed within six months after the date of granting the aid, otherwise the aid shall be reimbursed.⁷

⁴ Communication from the Commission amending the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the TFEU to short-term export-credit insurance (2020/C 2044), OJ C 101, 28.3.2020, p. 1–3.

⁵ See Communication from the Commission Framework for State aid for research and development and innovation (2014/C 198/01), OJ C 198, 27.6.2014, p. 1–29, Annex II.

⁶ In case of aid awarded in the form of direct grants or tax advantages, 25% of the amount of the aid per month of delay shall be reimbursed. In case of aid in the form of repayable advances, the repayable advance shall be reimbursed in equal annual instalments within five years after the date of granting the aid.

⁷ In case of aid awarded in the form of direct grants or tax advantages, 25% of the amount of the aid per month of delay shall be reimbursed. In case of aid in the form of

Member States may also grant a guarantee covering the investment losses, in an amount to be established five years after completion of the investment, according to the criteria set out in the Amended TF.

For these three subcategories, in order to encourage prompt and effective action to face the current outbreak, as well as coordinated action among Member States, the Amended TF allows additional support when the projects are supported by more than one Member State and/or the investments are concluded within two months of the granting of the aid.

The aid must be granted by December 31, 2020 and the beneficiary companies must have not been in financial difficulty as of December 31, 2019. Aid granted to projects initiated after February 1 shall be considered as having an incentive effect even if the project started before the aid was granted; aid may also be granted to projects started before February 1, provided it can be demonstrated that the aid can accelerate or widen the scope of the project.

- **Aid aimed at preserving employment for companies particularly affected by the COVID-19 outbreak.** The Commission had hitherto encouraged Member States to adopt non-selective measures regarding the deferral of taxes/social security contributions and wage subsidies, which do not constitute State aid if they are available to all companies. In the Amended TF, the Commission now provides for the possibility to grant such measures on a selective basis for specific sectors, regions or companies that are particularly hit by the COVID-19 outbreak. This possibility is provided for under Article 107(3)(b) TFEU, which allows for aid to remedy a serious disturbance in the economy of a Member State. More specifically:

repayable advances, the repayable advance shall be reimbursed in equal annual instalments within five years after the date of granting the aid.

- Under the Amended TF, Member States may grant aid in the form of temporary deferrals of tax and/or of social security contributions or obligations to companies particularly affected by the COVID-19 outbreak because of the economic sector in which they operate, their location, or their size. Aid shall be granted before December 31, 2020 and the end date of the deferral shall be no later than December 31, 2022;
- The Amended TF enables Member States to grant aid in the form of contributions to the wage costs of companies particularly affected by the COVID-19 outbreak that would otherwise dismiss employees, conditional upon the beneficiary company maintaining its staff in employment during the period covered by the aid. The wage subsidy can last no more than 12 months from the application for the aid and shall cover no more than 80% of the benefitting employees' individual monthly gross salary. Under the Amended TF, such aid may be combined with other employment support measures, provided that this does not result in overcompensation, as well as with tax deferrals and deferrals of social security payments.

Conclusion

The Amended TF is a continuation of the Commission's efforts to loosen State aid rules in order to allow Member States to support their economy and specific sectors or companies that are particularly hard hit by the COVID-19 crisis. While it is up to Member States to set up and seek clearance for their respective support measures, the overall message from the Commission remains that it will stand ready to clear these measures as fast as possible. Companies potentially eligible for aid should continue to follow these developments in order to make sure they fulfil

the criteria to benefit from these potential support measures.

...

CLEARY GOTTlieb