ALERT MEMORANDUM

State Aid Temporary Framework Extended and Expanded

October 16, 2020

On October 13, the Commission extended and expanded for the fourth time the scope of the State aid Temporary Framework to support the economy in the context of the COVID-19 outbreak (the "TF").[1] Based on this amendment, all TF provisions are extended until June 30, 2021 while the section on recapitalization support is prolonged until September 30, 2021. Further to this extension, the amendment expands the Commission's current State aid toolbox with a new possibility of support for companies with uncovered fixed costs, as well as amending existing rules to facilitate State exit from the capital of companies that had been recapitalized following the COVID-19 outbreak. The amendment also provides for an extension of the temporary removal of all countries from the list of "marketable risk" countries, for the purpose of State export credit insurance until June 30, 2021.

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[1] *See* Cleary Gottlieb alert memos "State Aid Temporary Framework to Support the Economy in the Context of the COVID-19 Outbreak" and "The European Commission Relaxes State Aid Rules for COVID-19-related Recapitalizations".

1. TF Extended Until At Least Mid-2021

The TF initially allowed exceptional State aid related to the COVID-19 outbreak (such as subsidized or guaranteed loans and other measures aimed at addressing companies' pressing liquidity issues) until the end of 2020. Furthermore, recapitalization measures were available until June 30, 2021. The October 13 amendment extends these dates to June 30, 2021 and September 30, 2021, respectively. The Commission considers this extension as necessary in light of the deeper-than-expected economic contraction triggered by the COVID-19 outbreak, illustrated by the EU's 2021 GDP forecast (which is around 4.5% below the GDP level estimated in the Winter forecast). However, the amendment also acknowledges the risks of deepening disparities within the Internal Market between large and rich Member States, which have made ample use of the TF, and others. This probably explains the fact that the extension in time remains limited, and that the Commission will revisit the matter over the course of 2021.

The amendment also clarifies that the ceilings set out in the TF on the amount of aid to be provided for specific instruments must be applied at any given point in time over the entire duration of the TF, including the prolonged period. This means, for instance, that a company which has received and then fully repaid the maximum amount of aid provided for a short-term State loan during that period may be eligible again for a loan up to the maximum amount of the ceiling until June 2021.

2. State Exit Possibilities From Recapitalization Beneficiaries Expanded

The amendment introduces a change in the recapitalization rules aimed at facilitating a State's exit under market conditions from companies which it has previously recapitalized under the TF. Such exit, once the company has returned to better prospects, remains an overarching goal of the TF and allows a number of constraints and pro-competitive remedies to be lifted.

More specifically, the initial TF rules on recapitalizations provided that the sale of the State's equity stake required – in principle – either an open and non-discriminatory consultation of potential purchasers or a sale on a stock exchange. The amendment allows the State, two years after the recapitalization, to avoid this process in cases where the State was a pre-existing shareholder – provided that the sale is backed up by an independent valuation. For companies where the State was one of several pre-existing shareholders and increased its stake through the recapitalization, this flexibility applies for the sale of the equity that allows the State to return to its pre-existing stake. For companies that were already fully owned by the State, the sale to a third (privately-owned) party of the State's equity provided during the recapitalization shall be considered as an "exit", even if the State retains its pre-Covid stake. In both cases, the independent valuation must result in a positive price. In case of a negative price, the state will not be considered to have exited the company, which may trigger the requirement to table a restructuring plan within 6 years of the recapitalization.

3. Support for Companies with Uncovered Fixed Costs

The amendment expands the TF's toolbox by allowing support to undertakings that were not in difficulty on December 31, 2019 for their "uncovered fixed costs" (in effect, their losses) incurred between March 1, 2020 and June 30, 2021. This new category of aid is reserved to companies that experienced a turnover decline of at least 30% compared to 2019. The support can cover up to 70% of beneficiaries' losses (after taking into consideration aid granted under other rubrics of the TF) for a maximum of EUR 3 million per undertaking. This proportion is increased to 90% for micro and small companies. The goal of this new measure is to allow undertakings which were particularly hit during the crisis to avoid restructuring costs associated with downsizing, in addition to maintaining their capital. The new possibility is designed primarily to support SMEs.

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The amendment of the TF further expands the already very broad (and unprecedented) flexibility allowed by the Commission under State aid rules. The amount of total aid granted since the beginning of the outbreak has already reached approximatively EUR 3 trillion. In light of the increased sanitary restrictions and deepening contraction of the European economy, it is likely that Member states will swiftly use this increased flexibility in the coming weeks and months.

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