

COVID-19 and the Aviation Sector

State Aid and Competition

July 7, 2020

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THE COMMISSION'S STATE AID TOOLBOX

MEASURES THAT DO NOT QUALIFY AS AID

- Measures to the benefit of all undertakings, including:
 - Wage subsidies
 - Suspension of payments of corporate and value added taxes
 - Social welfare contributions
 - Financial support directly to individuals / consumers, *e.g.*, for cancelled services or tickets not reimbursed by the concerned operators

AID MEASURES THAT ARE EXEMPTED FROM PRIOR NOTIFICATION

- I. [General Block Exemption Regulation](#): exempts several types of aid measures from prior Commission approval
 - Cannot cover companies in financial difficulties (with certain exception, *e.g.*, start-up aid schemes)
- II. [De minimis support](#):
 - Direct grants €200,000 / 3 years for most sectors
 - Subsidized loans up to €1 million / 5 years
 - Subsidized guarantees for loans €1,5 million / 5 years
- Can cover companies in financial difficulties pre-COVID 19

ARTICLE 107 (2)(B) TFEU

- Measures aimed at compensating damage directly caused by the COVID-19 outbreak
- Cannot cover more than the direct damage resulting from COVID-19
- Primarily aimed at compensating companies in sectors particularly hit by the outbreak, such as:
 - Transport
 - Tourism
 - Culture
 - Hospitality
 - Retail
 - Organizers of cancelled events
- Could, in principle, cover companies in financial difficulties pre-COVID 19, but only for difficulties related to or encountered due to the Covid-19 outbreak
- **Example:** [Danish scheme for events organizers](#)

ARTICLE 107 (3)(B) TFEU

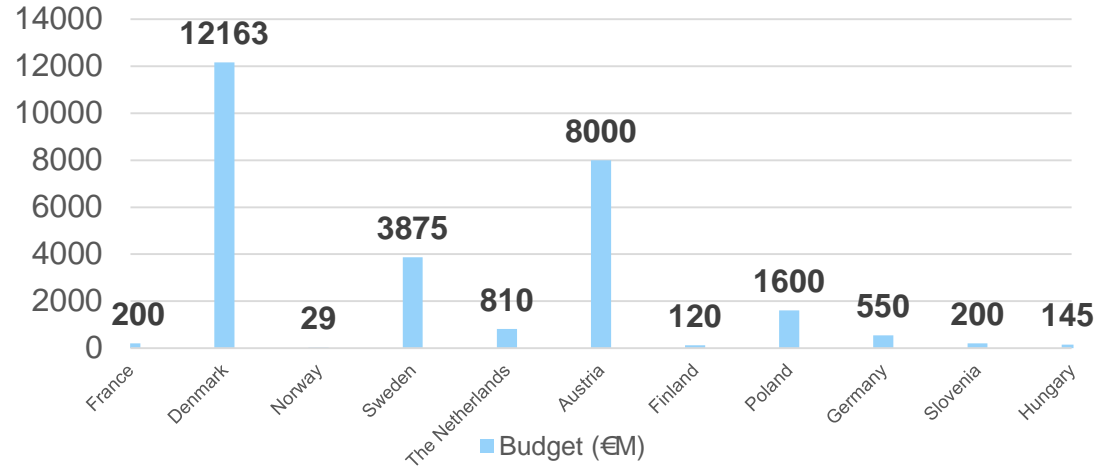
- New [Temporary Framework](#) in force until December 31, 2020, enabling:
 - Direct grants, repayable advances or tax advantages of up to €800,000
 - Loan guarantees (minimum premiums: 25-200 bps; underlying loans: up to twice the 2019 wage bill or ¼ of 2019 turnover or 12/18 months of liquidity needs)
 - Subsidized loans (minimum interest rate: 1-year IBOR + credit margin 25-200 bps; loans: up to twice the 2019 wage bill or ¼ of 2019 turnover or 12/18 months of liquidity)
 - Short term export credit insurance
- Cannot cover companies in financial difficulties pre-COVID 19
- **Examples:** [French](#), [German](#), [Italian](#) & [Portuguese](#) schemes

ARTICLE 107(3)(C) TFEU

- Rescue or restructuring aid to companies in financial difficulties, including pre-COVID 19 (in line with the [2014 Rescue & Restructuring Guidelines](#))
- Rescue aid to be granted first in principle:
 - Loans / guarantees of up to 6 months
- **Example:** Irish scheme for Brexit

Overview of decisional practice – Article 107(2)(b) TFEU

TOTAL AMOUNT PER MEMBER STATE

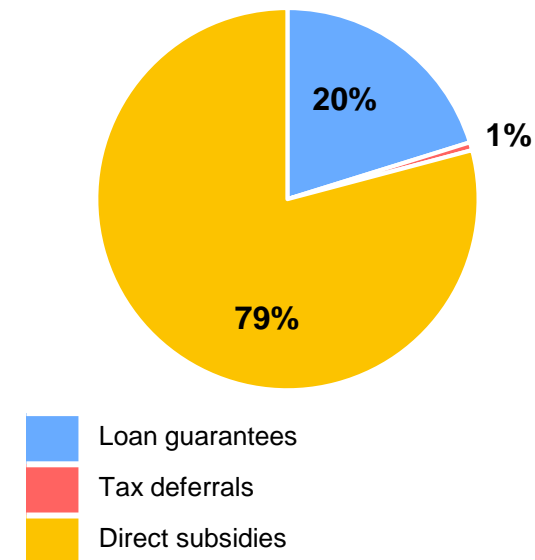


TOTAL AMOUNT COVERED BY STATE AID

> 27.7€Billion*

* As of July 2, 2020

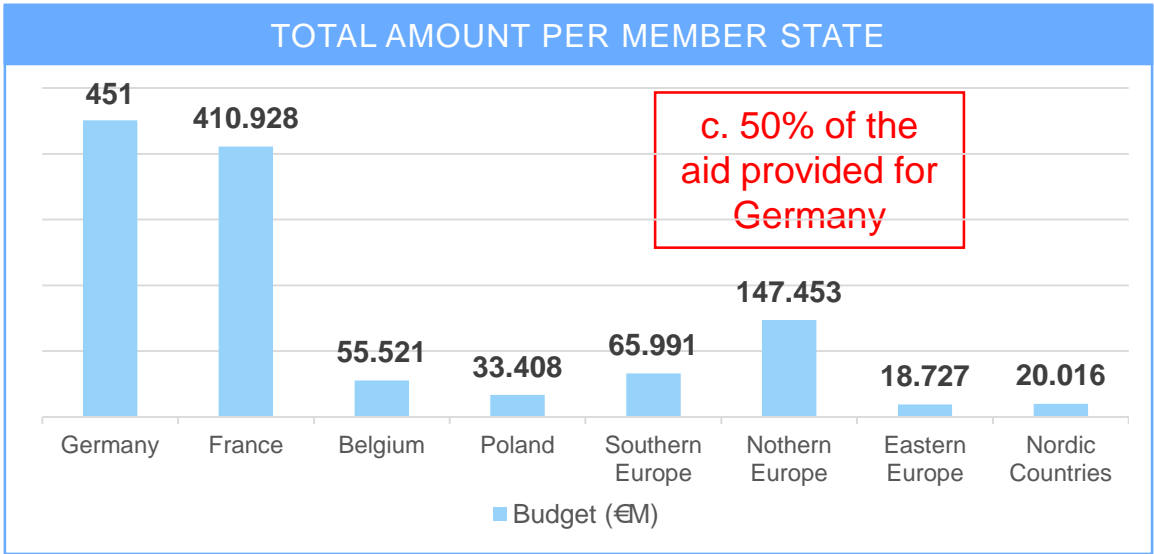
TYPES OF AID



MEMBER STATE	DECISIONS
Total	22
France	1
Denmark	8
Norway	2
Sweden	3
Netherlands, Poland, Finland, Germany, Austria, Hungary, Slovenia	8

Approved aid between
24 hours
and
1 month.

Overview of decisional practice – Article 107(3)(b) TFEU



* Conservative estimates, some articles refer to a total amount of up to c. 2000 billion. In some cases the aid amounts are not specified in the decisions, particularly concerning Germany, and press sources have been used.

MEMBER STATE	DECISIONS
Total	178
France, Belgium, Germany, Poland	46
Greece, Portugal, Spain, Italy, Malta, Slovenia	39
UK, Ireland, Netherlands, Austria, Luxembourg, Czech Republic	31
Romania, Latvia, Estonia, Slovakia, Lithuania, Hungary, Bulgaria, Croatia	43
Denmark, Norway, Iceland, Finland, Sweden	20

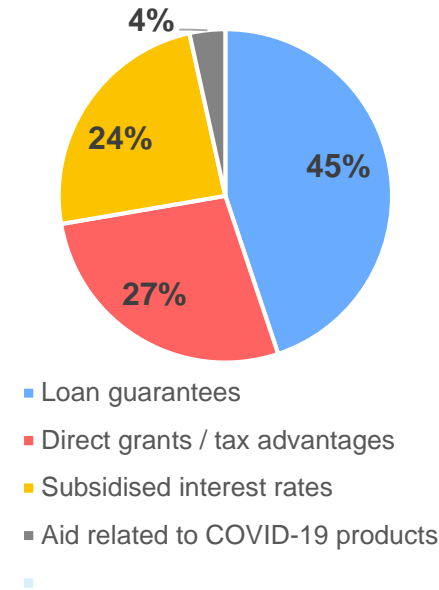
Aid approved between 48 hours and 2 months.

TOTAL AMOUNT COVERED BY STATE AID

> 1,200€Billion*

* As of July 2, 2020

TYPES OF AID



Beneficiary	Aid Instrument	Scheme / Individual aid	Legal Basis	Appeal
	Tax deferment	French Scheme – €200,1 mil	Article 107(2)(b) TFEU – Exceptional occurrence	
	Guarantee	Swedish Scheme – €455 mil	Article 107(3)(b) TFEU	
	Guarantee	Danish individual Aid – €137 mil Swedish individual Aid – €137 mil	Article 107(2)(b) TFEU – Exceptional occurrence	 
	Loan, repayable advances	German Individual Aid – €50 mil	Article 107(2)(b) TFEU – Exceptional occurrence	
	Guarantee and shareholder loan	French Individual Aid – €7 bil	Article 107(3)(b) TFEU	
	Guarantee Recapitalization	Finish Individual Aid – €600 mil Finish Individual Aid – €286 mil	Article 107(3)(b) TFEU	 
	Rescue loan	Portuguese Individual Aid - €1.2 bil	Article 107(3)(c) TFEU	
	Recapitalization	German Individual Aid - €6 bil	Article 107(3)(b) TFEU	
	Recapitalization	Latvian Individual Aid - €250 mil	Article 107(3)(b) TFEU	
	Grant	Cyprus Scheme - €6.3 mil	Article 107(3)(b) TFEU	
	Subordinated loan	Austrian Individual Aid - €150 mil	Article 107(2)(b) TFEU – Exceptional occurrence	

PRE-COVID PRECEDENTS

Prior **Commission communications and decisional practice** on Arts. 107(2)(b) and 107(3)(b) TFEU recognized the principle of non-discrimination .

See Communication on airlines post 9/11 attacks and subsequent decisions.

ART. 107(2)(B) TFEU

- Exceptional occurrences typically **affect more than one undertaking**.
- Risk of **discrimination against other victims** (competitive advantage).
- Principle of **strict compensation of damages**.
- *See Cyprus closure of airspace case, Slovenia volcanic ash case*

ART. 107(3)(B) TFEU

- A serious disturbance in the economy typically affects the **Member State as a whole, not one undertaking**.
- **Principle of proportionality/ obligation to balance effects**.
- *See 2008 Financial crisis banking Communication*

STATE AID SCHEMES

- The aid benefits airlines in a **proportion that is greater** than:
 - i. Share of the COVID-19 damage in the aviation sector of the relevant Member State.
 - ii. Connectivity share in the relevant Member State.

INDIVIDUAL AID

- Aid reserved to a single **airline discriminates** against other airlines, who:
 - i. Suffered similar COVID-19-related damages
 - ii. Also ensure connectivity of the aid issuing Member State.

Non-discriminatory aid that attains the objectives?

Proportional to market shares/ load factor/ passengers transported



**Ensures air connectivity of remote regions during COVID-19.
Provides the necessary transport services to deal with the crisis.**

PSO ROUTES PRIOR TO COVID-19

Article 16(12) Reg. 1008/2008

- PSO routes on which the **original operator ceased to operate due to the crisis.**
- Member States can select **another private airline** for a **temporary period** (< 7 months , non-renewable)
- Only to a **third company**, not original operator.
- **No formal proceedings:** contractual agreement suffices (respect Art. 107 TFEU)

Article 17 (3) Reg. 1008/2008

- Possible modification of **an existing public service contract**, subject to public procurement rules.
- Principles of **necessity and proportionality.**
- Modifications **limited** to the crisis period (not beyond December 31, 2020).
- **Otherwise, a new contract** must be awarded by the same emergency procedures as applicable for **new PSO routes.**

NEW PSO ROUTES

- For routes operated commercially prior to the COVID-19 outbreak, the award of PSOs are, **in principle, not possible.**
- **Emergency PSOs** can be awarded:
 - **Max. 3-6 months** (in any case, before Dec. 31, 2020)
 - General (simplified) public procurement rules.
 - No need to inform the Commission in advance; only DG Move *ex post* (Arts. 16-17 Reg. 1008/2008 do not apply).
 - Compliance with Art. 107 TFEU (*Altmark* criteria).
 - Member States must prove:
 - 1) Routes **essential** to be kept active
 - 2) Minimum **frequency** (connections) and **volumes** (e.g. passenger capacity, freight traffic)
 - 3) **Necessary** to maintain the route.

COMPETITOR COOPERATION TO ADDRESS SHORTAGES OF ESSENTIAL GOODS DURING COVID-19

- **In principle: no relaxation in the application of competition law during COVID-19.**
- The Temporary Framework is simply intended to allow companies to assess the competitive effects of their cooperation projects aimed at **addressing the shortage of essential products and services** during the COVID-19 pandemic. The Temporary Framework is an interpretation of Article 101(3) TFEU.

OBJECTIVE OF THE TEMPORARY FRAMEWORK: TO IMPROVE TRANSPARENCY AND TO ACT SWIFTLY

Scope of application	<ul style="list-style-type: none">• Cooperation projects to address shortages of essential goods and services during the pandemic• Applicable to all sectors, but particularly the health sector• The Temporary Framework shall remain in force until its withdrawal.
Criteria	<ul style="list-style-type: none">• Cooperation actually increases production in the most efficient way to stop or avoid the shortage• Temporary• Strictly necessary• Document all exchanges

MINIMUM TICKET PRICE INITIATIVES AND INTERNAL MARKET RULES

Minimum Price Initiatives	<ul style="list-style-type: none"> • <u>Austria</u> <ol style="list-style-type: none"> 1) An increase of taxes imposed on short-haul (< 350 km) flights (€30 tax/ticket) 2) “Anti-dumping” legislation prohibiting airlines from pricing below tax level and other compulsory charges (€40 minimum price) • <u>Netherlands</u> considering minimum price (€34/ticket).
Internal Market Rules and Case Law	<ul style="list-style-type: none"> • ECJ case law: MS imposing minimum prices is a restriction to the free movement of goods/services (<i>Cipolla</i>), as lower-cost undertakings from other MS are prevented from competing more effectively. • Climate change justification would be disproportionate: <ol style="list-style-type: none"> 1) Tax increase sufficient to attain the objective. 2) The measure is in fact aimed at low-cost carriers. 3) Discrimination on grounds of nationality (low-cost carriers are non-Austrian).

AVIATION, ANTI-COMPETITIVE CONDUCT AND REGULATION

Cooperation between Competitors	<ul style="list-style-type: none"> • Norwegian NCA temporarily suspended the competition regulation for airlines, allowing SAS and Norwegian to cooperate on route offering. • Maintain the transport of persons/goods to ensure that citizens have access to necessary goods and services.
Regulation	<ul style="list-style-type: none"> • As part of aid package, Air France had to abandon domestic routes where TGV connection available • France announced it would extend this prohibition to other (non-aided) airlines.



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