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THE EUROPEAN COMMISSION'S CORONAVIRUS STATE AID FRAMEWORK

The European Commission has published a framework document setting the conditions that it will apply temporarily when clearing EU governments' packages of State aid measures to support businesses affected by the coronavirus outbreak.

Key issues

- EU governments must submit their aid packages to the European Commission for State aid clearance.
- The Commission will clear aid involving direct grants, State guarantees, subsidised loans, short term export credit insurance and compensation for hard-hit sectors.
- There are limits on the aid that may be granted, but they have been set at unprecedentedly high levels.

NO SUBSIDY RACES

As was the case in the financial crisis which started in 2008, the Commission does not consider that the gravity of the economic disruption caused by the coronavirus means that the State aid rules should be disapplied. Instead, its approach is to set out common rules with which all EU governments' aid packages must comply, in order to ensure that "the EU Internal Market is not fragmented", "the level playing field stays intact" and to avoid "harmful subsidy races, where Member States with deeper pockets can outspend neighbours to the detriment of cohesion within the Union."

THE TYPES OF PERMISSIBLE AID

The framework covers the following five forms of State aid which the Commission will clear (but which must still be notified to it),

Direct grants, repayable advances or tax advantages

Up until 31 December 2020, EU governments (which for these purposes includes the UK) can grant aid of up to €800,000 per business in the form of direct grants, repayable advances, tax or payments advantages, in order to address shortages or unavailability of liquidity.

Different rules apply for aid granted to businesses in the agricultural, fisheries and aquacultural sectors, and those active in the processing and marketing of agricultural products.

State guarantees on loans

State guarantees for loans to businesses can be granted up until 31 December 2020, provided:

- a premium is paid: 50 basis points (bps) for a 1 year maturity loan (25bps for SMEs); 100 bps for a 2-3 years maturity loan (50 bps for SMEs); and 200 bps for a 4-6 years maturity loan (100 bps for SMEs);
- the guarantee duration is no more than six years;
- for loans with a maturity beyond 31 December 2020, the amount of the loan principal does not exceed: (i) double of the 2019 wage bill of the

beneficiary; or (ii) a quarter of its total 2019 turnover. However, with "appropriate justification" the amount of the loan can be increased to cover a borrower's self-certified liquidity needs for 12 months (18 months for SMEs), and shorter maturity loans can be even larger;

- the guarantee does not exceed: (i) 90% of the loan principal, where losses are sustained proportionally and under same conditions by the credit institution and the State; or (ii) 35% of the loan principal, where losses are first attributed to the State (i.e. a first-loss guarantee).

These limits are flexible, in that Member States can notify schemes where some factors exceed these limits if that is compensated by shortfalls in other areas (e.g. lower guarantee coverage offsetting a longer maturity).

However, guarantees cannot be granted for borrowers that were in difficulty on 31 December 2019, or that have since entered into difficulties for reasons unrelated to coronavirus outbreak. Aid to rescue such businesses must be notified separately and assessed under the Commission's standard framework for rescue and restructuring aid. A (non-SME) business will typically be considered to be in difficulty if (i) more than half of its subscribed share capital has disappeared as a result of accumulated losses; (ii) it is subject to insolvency proceedings or fulfils the criteria for such proceedings; or (iii) for the past two years its book debt to equity ratio has been greater than 7.5 and EBITDA interest coverage ratio has been below 1.0.

Subsidised interest rates for loans

Up until 31 December 2020, loans may be granted at reduced interest rates which are at least equal to the base rate (1 year IBOR or equivalent as published by the Commission) applicable on 1 January 2020 plus a credit risk margin of 25-200 basis points, which is determined in the same way as for State guarantee premiums (see above).

Provisions regarding the limits on the maximum duration and amount of the loan, the possibility of flexing certain limits and the prohibition on aid to businesses in difficulty are the same as for State guarantees (see above).

Short-term export credit insurance

Under the usually-applicable State aid rules, "marketable risks" cannot be covered by export-credit insurance with the support of Member States. Under the Commission's new framework, cover for such risks can be provided if a member state can provide sufficient evidence of the unavailability of cover for the risk in the private insurance market.

Compensation for hard-hit sectors

The framework also explains that EU governments can give compensation to businesses in sectors that have been particularly hit by the outbreak (e.g. transport, tourism, culture, hospitality and retail) and to organisers of cancelled events, for damages caused directly by the outbreak, in the same way as they can to compensate damages caused by natural disasters.

WHERE AID IS CHANNELLED THROUGH FINANCIAL INSTITUTIONS

The framework document clarifies that where State guarantees or subsidised loans are provided through banks or other financial institutions, any indirect advantages that arise for those institutions will be cleared along with those for the direct recipients, and will not be considered to be extraordinary public financial support that could trigger resolution action under the Bank Recovery and Resolution Directive or the Single Resolution Mechanism Regulation.

However, financial intermediaries will be expected to implement mechanisms to ensure that the advantages are passed on to the largest extent possible to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates.

TIMING OF CLEARANCES

The Commission has stated that, where necessary, it will issue clearance decisions within days of receiving a complete State aid notification, rather than the several months that State aid clearances usually take. For example, the Commission approved a French scheme for €300 billion of liquidity support within 48 hours of its framework entering into force.

AID THAT DOES NOT NEED TO BE NOTIFIED

A Communication by the Commission issued on 13 March sets out various other ways in which EU Governments can grant State aid outside the coronavirus framework. For example, Member States can decide to take measures that are applicable to all companies, such as wage subsidies and suspension of payments of corporate and value added taxes or social contributions. As they are not selective, such measures are not notifiable State aid. Similarly, financial support to consumers (e.g. for cancelled services or tickets that are not reimbursed) can also be put in place without the involvement of the Commission.

There are also various forms of aid that can be issued under block exemptions, without prior notification. However, these allow much lower amounts of aid than under the Commission's coronavirus framework, and have stricter conditions.

COMMENT

In recognition of the seriousness of the economic harm caused by the coronavirus outbreak, the framework allows unprecedentedly high levels of State aid to be granted by EU governments. For instance, while it follows a similar approach to the Commission's response to the financial crisis that started in 2008, the maximum permissible amounts of aid are considerably higher (e.g. grants of €800,000 per business instead of the €500,000 limit that applied in 2009).

A number of EU governments have already announced aid packages for businesses. Details of a number of those packages are available on Clifford Chance's website here. These national aid packages are now being reviewed by the Commission in line with the principles set out in the framework, and a number have already been approved. If any of those packages exceed the limits set out in the framework (subject to the flexibility to offset some excesses against shortfalls) the Commission may insist that they are revised. Consequently, businesses looking to make decisions based on the expected /announced funding should take this possibility into account.

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