State Aid Versus COVID-19

The Commission Adopts a Temporary Framework

José Luis Buendía and Angela Dovalo*

I. Introduction

It is clear by now that the COVID-19 outbreak and the containment measures put in place by Member States will have an impact in the economy of all the Member States of the European Union.

In this context, the Commission has already indicated that it will take all the measures at its disposal to ease the socio-economic impact of the COVID-19 outbreak in the EU. However, the Commission has also acknowledged that, due to the limited budget of the EU, most of this financial support to undertakings will need to come from Member States. This will raise particular issues from a State aid perspective.

Although Member States already have multiple tools at their disposal to support their economies in line with State aid rules, the Commission is moving swiftly to adapt the existing State aid framework to these exceptional circumstances created by the COVID-19 outbreak.

In this regard, the Commission has approved a Temporary Framework based on Article 107(3)(b) TFEU that will enable a quicker and more flexible approval of State aids that tackle problems relating to liquidity and access to finance that many undertakings may face as a consequence of the COVID-19 outbreak.¹

In its practice so far, the Commission has also shown that it will ease the necessary procedural rules to authorise notified State aids as swiftly as possible. Decisions are being approved in record times, with some being approved in only 24 hours following their notification.²

II. Existing State Aid Tools to Mitigate the Economic Impact of the COVID-19 Outbreak

The Temporary Framework adopted by the Commission will be a useful tool for the speedy implementation of State aid in the context of the COVID-19 outbreak. However, this framework merely complements the existing State aid tools at the disposal of Member States to mitigate the socio-economic impact of the COVID-19 outbreak. As the Commission has recently recalled in its Communication of 13 March 2020,³ Member States have various options available within the existing State aid rules.

First, Member States may adopt *measures of general application that may fall outside the scope of EU State aid rules* altogether. These may include wage subsidies, suspension of payments of corporate and value added taxes or social contributions available to all undertakings. Direct financial support to consumers (eg for cancelled services that are not reimbursed by the provider) also fall outside the scope of State aid control.

Second, State aid measures may be adopted under the *General Block Exemption Regulation*⁴ and the *de minimis Regulation*⁵ without the Commission's prior authorisation.

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* José Luis Buendía and Angela Dovalo are Partner and Associate at Garrigues Brussels. José Luis is also visiting professor at King's College London and coeditor of EStAL.
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- 1 Communication from the Commission on a Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, C(2020) 1862 final, 19 March 2020.
- 2 Commission Decision of 12 March 2020 on State aid SA.56685 (2020/N) – DK – Compensation scheme for cancellation of events related to COVID-19.
- 3 Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Investment Bank and the Eurogroup on a Coordinated economic response to the COVID-19 Outbreak, COM(2020)112 final, 13 March 2020.
- 4 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 Text with EEA relevance, OJ L 187, 26.6.2014, p. 1–78.
- 5 Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of Treaty of Functioning of the European Union to *de minimis* aid, OJ L 352, 24.12.2013, p. 1–8.

Third, subject to the Commission's prior approval, Member States can compensate undertakings for damage caused by exceptional occurrences, such as the current COVID-19 outbreak, under *Article 107(2)(b) TFEU*. This possibility would serve to support companies particularly hit by the outbreak such as those in the transport, tourism, hospitality and retail sectors.

Fourth, under *Article 107(3)(b) TFEU*, the basis of the Temporary Framework, the Commission may also approve State aid intended to remedy a serious disturbance in the economy of a Member State, such as the COVID-19 outbreak.

III. The Temporary Framework

On 19 March 2020, the Commission issued a Communication setting out a Temporary Framework for State aid measures to support the economy during the current COVID-19 outbreak on the basis of *Article 107(3)(b) TFEU*. The Commission has considered that the COVID-19 outbreak and the containment measures implemented by Member States may cause serious disturbances in the economy of the EU Member States.

This Temporary Framework will be applied to all notified measures between 19 March 2020 and 31 December 2020, as well as to non-notified aid granted as of 1 February 2020. Therefore, any aid expected to be authorized under the Temporary Framework must be granted before 31 December 2020, although in the case of tax advantages, their effects can be verified later (when tax declarations for 2020 are due).

It is important to remember that the Temporary Framework is not a hard law instrument and therefore does not set directly applicable rules. It is a soft law instrument: the Commission merely clarifies the conditions that it would allow it to authorize State aid aimed at supporting the economy in the context of the current COVID-19 outbreak. The Commission also makes clear that it would be able to deal very quickly with the notifications of Member States. In particular, the Temporary Framework sets out the tools that Member States will have at their disposal to provide liquidity and access to finance to undertakings affected by this outbreak. In order to preserve this objective, the Temporary Framework envisages the possibility of authorizing certain types of aid to undertakings that were not in difficulty prior to 31 December 2019.

First, Member States may establish schemes to grant aid in the form of *direct grants, repayable advances and tax advantages* of up to €800,000 per undertaking, in order to cover their urgent liquidity needs.⁶

Second, Member States may also offer *public guarantees* on both investment and working capital loans granted to undertakings under certain circumstances. In particular, guarantee premiums must be set at a minimum level, depending on the undertaking's size and the maturity of the underlying loan, and must be granted for a limited period (maximum 6 years) and loan amount (depending on the undertaking's annual wage bill, turnover or liquidity needs). The public guarantee can cover up to 90% of the loan principal, where losses are attributed proportionally and under the same conditions to the State and the credit institution, but only up to 35% where losses are first attributed to the State.

Third, Member States may also grant investment and working capital *loans at subsidised interest rates*. The Temporary Framework establishes the same limits as in the guarantee schemes with regards to the maturity and amount of the loans that may be granted.

Under the Temporary Framework, both aid in the form of guarantees and loans may be *channelled through credit institutions or financial institutions* as financial intermediaries. In that case, the aid will be considered to be directly targeted towards the beneficiary and not towards the financial intermediary. However, the Temporary Framework does stress that safeguards must be introduced in order to minimize any improper indirect aid to financial intermediaries and ensure that the aid is, to the largest extent possible, passed on to the final beneficiary. Financial intermediaries should be able to demonstrate this with evidence of, *inter alia*, higher funding volumes, riskier portfolios, lower collateral requirements, guarantee premiums or lower interest rates.

Finally, the Temporary Framework will make the conditions of the Communication from the Commission on *short-term export-credit insurance*⁷ more flex-

6 Specific provisions are set out for the agricultural and fishery sectors.

7 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 Text with EEA relevance, OJ C 392, 19.12.2012, p. 1-7

ible. The Commission recognises that, due to the COVID-19 outbreak, coverage for marketable risks for certain countries could be temporarily unavailable. Under the Temporary Framework, Member States will be able to offer short-term export credit insurance to undertakings in need if they demonstrate that this is the case.

IV. The Commission's State Aid Practice in the Context of the COVID-19 Outbreak

Since the start of the COVID-19 outbreak, nine Member States have already notified and obtained approval for State aid schemes in over 15 Commission decisions under Article 107(2)(b), as well as Article 103(3)(b) TFEU and the Temporary Framework.

The Commission has already approved two aid schemes notified by Denmark under Article 107(2)(b) TFEU (ie not under the Temporary Framework). The first scheme, which was approved within 24 hours from its notification, will have a budget of €12 million to compensate for the losses suffered by organizers of events with more than 1,000 participants as a result of the COVID-19 outbreak.⁸ The second scheme will compensate the self-employed for up to 75% of the expected loss of turnover directly linked to the coronavirus outbreak.⁹ The scheme is expected to have a budget of approximately €1.3 billion and the maximum compensation per month and per person will amount to €3,000.

However, most of the 23 notified State aid schemes until 25 March 2020 (ie, only a week after the adoption of the Temporary Framework) have been approved under Article 107(3)(b) TFEU and the Temporary Framework. While some Member States have notified only one type of aid, mainly guarantee schemes, others have already notified a combination of two or even three types of aid under the Tempo-

rary Framework:

- *Italy* has notified a State aid scheme of direct grants and repayable advances for supporting the production of medical equipment and masks (SA.56786), as well as a guarantee scheme to support a debt moratorium for SMEs affected by COVID-19 outbreak (SA.56690).
- *Latvia* notified a State aid programme that will combine a guarantee scheme and a subsidised interest rate loan scheme (SA.56722). The two schemes will involve a public budget of €100 million and are expected to mobilise up to €400 million.
- The *United Kingdom* will implement two State aid schemes for supporting SMEs affected by the COVID-19 outbreak under the 'Coronavirus Business Interruption Loan Scheme': a guarantee scheme (SA.56792) and a direct grant scheme (SA.56794).
- *Germany* has so far notified and obtained approval for three types of aid:
 - i. Two loan schemes implemented through the German promotional bank Kreditanstalt für Wiederaufbau (SA.56714)
 - ii. A guarantee scheme implemented by federal and regional authorities, as well as promotional and guarantee banks (SA.56787).
 - iii. A State aid scheme granting aid in the form of direct grants, repayable advances and tax advantages (SA.56790).

In particular, the Commission has already approved four schemes granting aid in the form *direct grants, repayable advances and tax advantages* notified by Italy, Luxembourg, Germany and the United Kingdom. The Italian scheme,¹⁰ which was approved within 48 hours of its notification, will support the production and supply of medical devices and personal protection equipment. With an estimated budget of €50 million, the scheme will grant aid in the form of direct grants or repayable advances to undertakings that set up new facilities, expand their existing ones or convert their production lines in order to produce this equipment. The scheme notified by Luxembourg, will have a budget of €300 million to support companies and liberal professions through repayable advances in order to help them bear their operating costs.¹¹ The German scheme will grant aid in

8 Commission Decision of 12 March 2020 on State aid SA.56685 (2020/N) – DK – Compensation scheme for cancellation of events related to COVID-19.

9 Commission Decision of 25 March 2020 on State aid SA.56791, not yet available.

10 Commission Decision of 22 March 2020 on State aid SA.56786 – Production of medical equipment and masks.

11 Commission Decision of 24 March 2020 on State aid SA.56742 – Luxembourg – Scheme for enterprises in temporary financial difficulties due to COVID-19.

the form of direct grants, repayable advances or tax and payment advantages to companies affected by the COVID-19 outbreak.¹² Finally, the scheme notified by the United Kingdom will have a global budget of approximately €645 million to support SMEs through direct grants.¹³

All four schemes will respect the limit of €800,000 per company set out in the Temporary Framework. In the case of Luxembourg, the aid granted per company will not exceed €500,000.

The Commission has also approved *several guarantee and loan schemes or combinations of both* notified by Member States which, in most cases, will be *channelled, at least partially, through financial intermediaries*. However, the Commission has considered in all cases that the authorised schemes include adequate safeguards to ensure that the aid is effectively channelled by the financial intermediaries to the final beneficiaries in need.

Guarantee schemes seem to be preferred type of aid for Member States to tackle the COVID-19 outbreak so far. The Commission has already approved over 10 schemes notified by Denmark,¹⁴ France,¹⁵ Germany,¹⁶ Italy,¹⁷ Latvia,¹⁸ Portugal,¹⁹ Spain²⁰ and the United Kingdom.²¹ In all notified schemes, the Commission considered that the limits regarding the maturity and amount of the loans covered by the guarantees, the guarantee premiums and the risk taken by the State per loan²² established under the Temporary Framework were respected.

Most of the approved guarantee schemes will focus on supporting SMEs. Some Member States, like

Denmark, Italy and the United Kingdom, have designed schemes that will only offer support to SMEs. Others, such as Spain and France, have set up differentiated guarantee schemes for SMEs and larger undertakings. In the case of Portugal, the approved schemes will only be available to SMEs and midcaps which are active in four specific sectors: tourism, restaurants (and other similar activities), extractive and manufacturing industry and travel agency activities, touristic animation, event organisation (and similar activities). However, Latvia and Germany have notified guarantee schemes that will be available to companies of all sizes.

The approved schemes will mobilise large sums of public money. For instance, the Spanish²³ and Portuguese²⁴ schemes will have budgets of up to €20 billion and €3 billion respectively. The largest programme approved so far is the one notified by France,²⁵ which comprises three guarantee schemes which are expected to mobilise a budget of up to €300 billion. The first two schemes will enable the French public investment bank Bpifrance to grant guarantees on commercial loans and credit lines to undertakings with up to 5,000 employees. The third scheme foresees the granting of State guarantees on portfolios of new loans granted by banks for all types of companies.

Finally, the Commission has also approved the *subsidised loan schemes* notified by Latvia²⁶ and Germany.²⁷ In particular, Germany notified two loan schemes that will be implemented through the public development bank Kreditanstalt für Wiederauf-

12 Commission Decision of 24 March 2020 on State aid SA.56790, not yet available.

13 Commission Decision of 25 March 2020 on State aid SA.56792, not yet available.

14 Commission Decision of 21 March 2020 on State aid SA.56708 – Danish guarantee scheme for SMEs affected by COVID-19.

15 Commission Decision of 21 March 2020 on State aid SA.56709 (2020/N) – France – COVID-19: Plan de sécurisation du financement des entreprises.

16 Commission Decision of 24 March 2020 on State aid SA.56787 – Germany – COVID-19: Bundesregelung Bürgschaften 2020.

17 Commission Decision of 25 March 2020 on State aid SA.56690, not available yet.

18 Commission Decision of 23 March 2020 on State aid SA.56722 – Latvia – COVID-19: Loan guarantee scheme and subsidised loan scheme.

19 Commission Decision of 22 March 2020 on State aid SA.56755 – Portugal – Guarantee schemes related to Covid-19.

20 Commission Decision of 24 March 2020 on State aid SA.56803, not yet available.

21 Commission Decision of 25 March 2020 on State aid SA.56794, not yet available.

22 Although some schemes set a limit of 90% of the underlying loan, the maximum level allowed by the Temporary Framework (e.g. the French, Portuguese and German schemes), others have introduced more stringent limits: 50% in the Latvian scheme, 70% in the Danish scheme and the Spanish scheme for large undertakings, and the 80% the Spanish scheme for SMEs and the self-employed and the scheme notified by the UK.

23 Commission Decision of 24 March 2020 on State aid SA.56803, not yet available.

24 Commission Decision of 22 March 2020 on State aid SA.56755 – Portugal – Guarantee schemes related to Covid-19.

25 Commission Decision of 21 March 2020 on State aid SA.56709 (2020/N) – France – COVID-19: Plan de sécurisation du financement des entreprises.

26 Commission Decision of 23 March 2020 on State aid SA.56722 – Latvia – COVID-19: Loan guarantee scheme and subsidised loan scheme.

27 Commission Decision of 22 March 2020 on State aid SA.56714 (2020/N) – Germany – COVID-19 measures.

bau, in close cooperation with commercial banks, to provide loans to undertakings affected by the outbreak of COVID-19 at subsidised interest rates. The loans will only be granted until the end of this year and will be limited to a maximum duration of six years. The amount of the loan per company will be linked to the undertaking's liquidity needs in the foreseeable future. These German loan schemes will be complemented by the approved guarantee²⁸ and direct grants, repayable advances and tax advantages²⁹ schemes explained above.

V. Conclusion

In sum, in the context of the COVID-19 outbreak, Member States will have several options to support their economies within the current State aid framework and, in particular, within the new Temporary Framework approved by the Commission.

Under the latter, Member States will be able to mobilise large sums of State resources to support their economy by providing liquidity and access to finance to undertakings affected by the COVID-19 outbreak within the context of the flexible new Temporary Framework rules. The Commission has already shown that it will enable them to do so as swiftly as possible.

The Commission and the Member States hope that State aid approved under the Temporary Framework will mitigate the negative effects of the COVID-19 outbreak on the economy. This State aid would however also cause distortions of competition within the Internal Market, due to the very different financial capacities of each of the Member States. Finding the right balance between the positive and negative effects of the aid may be particularly tricky in times as difficult as these.

28 Commission Decision of 24 March 2020 on State aid SA.56787 - Germany - COVID-19: Bundesregelung Bürgschaften 2020.

29 Commission Decision of 24 March 2020 on State aid SA.56790, not yet available.