

European Commission Permits Member State COVID-19 Aid Measures

March 19, 2020

On March 19, 2020, the European Commission adopted a State Aid Temporary Framework (the 2020 Temporary Framework), which will remain in place until at least the end of December 2020 (see the Commission's statement on the proposal [here](#)). The 2020 Temporary Framework is intended to allow Member States to provide support to companies affected by the COVID-19 outbreak and is based on EU rules that allow member states to provide state aid "to remedy a serious disturbance in the economy of a Member State."

The 2020 Temporary Framework permits certain types of state aid to be granted to remedy the liquidity shortage faced by companies and is intended to ensure that the disruptions caused by the outbreak do not undermine their viability. It is targeted in particular at small and mid-size enterprises.

In particular, the 2020 Temporary Framework permits certain types of direct aid to be provided to companies that entered into financial difficulty after December 31, 2019:

1. **Direct grants or tax advantages.** Member States are permitted to set up schemes to grant up to €800,000 to specific companies to address their urgent liquidity needs.
2. **Subsidized guarantees on bank loans.** Member States are permitted to provide state guarantees to support bank loans taken by specific companies. These guarantees would have subsidized premiums and may relate to both investment and working capital loans. Guarantees will be limited to a maximum duration of two years and to 90 percent value of the original loan.
3. **Subsidized interest rates.** Member States are permitted to enable public or private loans with subsidized interest rates. The interest rate must be at least equal to the base rate applicable on January 1, 2020, plus a credit risk premium corresponding to the risk profile of the recipient.

How do the COVID-19 state aid measures compare to the state aid measures the European Commission adopted during the 2008-09 financial crisis?

During the 2008-09 financial crisis, the European Commission published a series of communications concerning provision of state aid relating both to support to financial institutions and support measures to the "real economy" for access to finance. There are a number of points of comparison to note between the European Commission's set of state aid communications during the financial crisis and the 2020 Temporary Framework.

First, a notable difference between the response to the COVID-19 outbreak and the response to the financial crisis is the speed of the European Commission's response. The 2020 Temporary Framework was produced and adopted very quickly.

By contrast, during the financial crisis, support measures to financial institutions were the Commission's immediate priority, and support for the measures for access to finance in the "real economy" followed. There was then a further three-week delay between the launch of the internal consultation of the framework and the adoption of the 2009 Temporary Community Framework for state aid measures to support access to finance in the current financial and economic crisis (the 2009 Temporary Framework). The more rapid response to the COVID-19 outbreak could make a significant difference to the survival of many businesses facing current liquidity shortages.

Second, unlike during the financial crisis, state aid to banks is not currently permitted in response to the COVID-19 outbreak. The 2020 Temporary Framework recognizes the important role of the banking sector in providing the necessary support to companies but makes clear that state aid channeled through banks or other financial institutions should constitute direct aid only to the companies that are customers of the bank and should not constitute aid to the bank itself. Banks will be required to put in place mechanisms to show that the benefits of the aid are passed on to end users and the 2020 Temporary Framework also contains guidance to Member States on how to ensure minimal distortion of competition between banks.

Third, the permitted support measures to the "real economy" for access to finance in the 2020 Temporary Framework are similar in substance to those permitted during the financial crisis, which were set out in the 2009 Temporary Framework. Like the 2020 Temporary Framework, the 2009 Temporary Framework was based on rules allowing aid to be granted "to remedy a serious disturbance in the economy of a Member State." The 2009 Temporary Framework included the ability for states to provide direct aid of up to €800,000, as well as subsidized loan guarantees and subsidized interest rates on public or private loans (see the text of the 2009 Temporary Framework [here](#)).

Fourth, and finally, the types of aid permitted by the 2020 Temporary Framework are not necessarily exhaustive. It remains possible for other forms of aid, such as larger bailouts of more than €500,000, to be notified to the Commission by Member States to help businesses survive. This was also possible during the financial crisis, but it is possible that there is the scope for Member States to take even more extensive action to combat the current crisis.

In addition to relying on the rules allowing aid "to remedy a serious disturbance in the economy of a Member State" for state aid that goes beyond the 2020 Temporary Framework (the basis relied on during the financial crisis), in the context of the COVID-19 outbreak, a notification could be made relying on a separate rule, which permits "aid to make good the damage caused by natural disasters or exceptional circumstances."

This is significant because the rules provide that aid to remedy an economic disturbance "may be considered" compatible with the internal market, whereas aid for natural disasters and exceptional circumstances "shall" be compatible with the internal market. In light of this lower burden on Member States, there could be the potential for Member States to take extensive rescue measures in response to the COVID-19 outbreak that go beyond even those adopted during the financial crisis.

Indeed, Denmark has already relied on this basis in its notification to the commission of March 11, 2020, of a scheme designed to compensate organizers of events with more than 1,000 participants that had been cancelled due to the COVID-19 outbreak (which the Commission rapidly approved). Further, the Commission itself in its proposal for the 2020 Temporary Framework has suggested that such rules could be grounds to permit aid to be granted by Member States to airlines to compensate them for damages suffered due to the COVID-19 outbreak.

CONTACTS

If you have any questions regarding this Sidley Update, please contact the Sidley lawyer with whom you usually work, or

Maarten Meulenbelt, Partner

+32 2 504 6467, mmeulenbelt@sidley.com

Ken Daly, Partner

+32 2 504 6439, kdaly@sidley.com

Attorney Advertising—Sidley Austin LLP is a global law firm. Our addresses and contact information can be found at www.sidley.com/en/locations/offices.

Sidley provides this information as a service to clients and other friends for educational purposes only. It should not be construed or relied on as legal advice or to create a lawyer-client relationship. Readers should not act upon this information without seeking advice from professional advisers. Sidley and Sidley Austin refer to Sidley Austin LLP and affiliated partnerships as explained at www.sidley.com/disclaimer.

© Sidley Austin LLP