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EU State Aid Measures in reaction to Covid-19

The outbreak of Covid-19 throughout every single EU Member State has resulted economic disruption on a scale which has never been experienced by the EU before. As a result of this disruption, and the potential economic fallout, over the past couple of months the EU has had to act swiftly and decisively in order to limit the potential damage of this pandemic to Member States, as well as to their own single market.

EU State Aid Rules

The main tool that the EU has used in order to support Member States has been a relaxation on some of the State aid rules, allowing Member States greater flexibility when administering aid to vulnerable sectors and undertakings.

Under EU State aid rules, Member States are generally prohibited from granting selective financial support to businesses in a way which would favour certain undertakings without first getting the approval of the European Commission (the "EC"), as this would distort competition and inter-state trade within the EU. Examples of potential State aid measures include: government direct grants; interest and tax reliefs; loans; guarantees; forbearance of existing loan terms; export credit insurance; and equity investment.

The State aid rules are primarily contained in Articles 107-109 of the Treaty on the Functioning of the European Union (the "TFEU"). Generally State aid will be unlawful unless it is automatically deemed lawful State aid due to any of the exceptions made under article 107(2) or if it is one of the five categories of aid that is deemed to be compatible by the EC under article 107(3). Article 107(3)(b) is of particular relevance in current circumstances as it allows for the



granting of aid to remedy a serious disturbance in the economy. Where the aid may be deemed compatible under article 107(3) TFEU, the EC must first be notified of the proposed measures.

State Aid Temporary Framework

In order to complement the existing legislation in relation to permissible State aid, on 19 March 2020 the EC adopted a State aid Temporary Framework (the "Framework") on the basis of Article 107(3)(b), which will stay in place until 31 December 2020. The Framework gives Member States more flexibility under State aid rules to support their economies and aims to assist businesses and sectors which have been most effected by the Covid-19 outbreak. Member States are still required to seek prior approval for certain measures from the EC, however, to date the EC has approved most Covid-19 related aid schemes and has done so within a couple of days of their notification. Once the scheme is approved, Member States are free to support businesses within its scope. The Framework also provides detailed guidance on what aid measures may be taken by Member States in order to remedy the disturbance to the economy caused by Covid-19.

The common goals of the Framework are to: ensure that businesses have the liquidity to keep operating, or to put a temporary freeze on their activities; and ensure that support for businesses in one Member State does not undermine European unity during the crisis. This second point is important as Member States have to be able to rely on the single market to ensure that the European market will survive the outbreak and continue to recover during its aftermath.

Types of Aid under the Framework

There are six types of measures outlined in the Framework which a Member State may employ. There is a broad distinction made been measures which do not and measures which do require notification and approval from the EC.

Measures that do not need to be notified and approved by the EC:

- Measures that apply to all companies, such as general wage subsidies, suspension of payments of corporate and value added taxes or social contributions that apply to all companies. These measures would not qualify as State aid under article 107(1) TFEU as they do not confer a selective advantage;
- Financial support granted directly to consumers, such as for cancelled services or tickets not reimbursed by the operators concerned. They do not qualify as State aid as they do not confer an advantage to any undertakings; and
- Measures designed in line with the General Block Exemption Regulations (the "GBER"). These
 measures qualify as State aid under TFEU but can be implemented by Member States without
 prior notification to the Commission. They can include risk finance aid schemes in favour of
 Small and Medium Enterprises up to €15 million per eligible undertaking.
- Public aids which fall under the de minimis Regulation. This can include aid of up to €200,000 over three years in most sectors, subsidised loans of up to €1 million and subsidised guarantees for loans of up to €1.5 million.

Measures that do need to be notified and approved to the EC before implementation:

- Rescue and Restructuring aid (Article 107(3)(c) TFEU): measures developed to meet acute liquidity needs and support undertakings facing financial difficulties due to the Covid-19 outbreak. These must follow the strict criteria set out in Rescue Aid and Restructuring State aid Guidelines. However, due to current circumstances these rules can be applied with flexibility and companies not yet in financial trouble may also receive support if they have acute liquidity needs due to Covid-19, also companies who received such support within the last 10 years may still exceptionally be eligible for support under the Framework;
- Compensation for damages caused by natural disasters and exceptional circumstances
 (Article 107(2)(b) TFEU): compensation can be given to undertakings in sectors that have been
 particularly affected by the pandemic, such as tourism, culture and hospitality. The aid must be
 directly linked to the damage caused and proportionate. During an application for measures to
 compensate organisers of large events by the Danish State, the EC qualified the Covid-19
 outbreak as an "exceptional occurrence"; and
- Measures to remedy a serious disturbance in the economy of a Member State (Article 107(3)(b)
 TFEU): The Framework explains that in the context of the pandemic, Members States may
 invoke this ground for aid measures granted for a limited period to remedy the liquidity shortage
 faced by undertakings and ensure that the disruption caused does not undermine their viability,
 especially for small and medium sized businesses.

If a measure falls within one of these categories, the Framework will enable Member States to:

- set up schemes, direct grants, selective tax advantages and advance payments of up to €800,00 to a business to address urgent liquidity needs;
- give subsidised State guarantees on bank loans taken out by businesses;
- enable public loans with subsidised interest rates;
- put in place safeguards for banks to channel aid to final customers, in particular small and medium sized enterprises. The Framework makes it clear that the aid is to be for the benefit of the customers, not the banks themselves; and
- aid in the form of short-term export credit insurance.

Only businesses that entered into financial difficulties after 31 December 2019 will be eligible for State aid under the Framework.

The Framework's scope was also extended on 3 April 2020 and the following additional forms of aid are now covered:

- support for Covid-19 related research and development;
- support for construction/upscaling of testing facilities;

- support for the production of products relevant to tackle the outbreak;
- tax deferrals/suspension of social security contributions; and
- wage subsidies for employees.

Irish State aid scheme under the Framework

On 21 April 2020 Ireland was given approval by the EC for its 'Sustaining Enterprise Scheme' with an estimated budget of €200 million, following the similar State aid approvals of numerous other Member States' schemes. The approval was made pursuant to the Framework. The maximum amount of aid available for each beneficiary complied with the Framework's limit of €800,000 per business.

The support available takes the form of repayable advances, direct grants, equity injections and subsidised loans, and will be accessible to companies that:

- experience or expect to experience a decline in turnover of at least 15% compared to their revenue before the outbreak of Covid-19; and
- are in certain manufacturing sectors and/or internationally traded sectors.

The scheme is not open to firms:

- operating in the coal or steel sector;
- that are active in the primary agricultural, fishery or aquaculture sectors; or
- that are covered by specific rules for financial services.

This scheme replaced the previous Irish scheme which had been approved by the EC on 30 March 2020 and had provided support in the form of repayable advances to firms employing 10 or more full time employees.

Irish authorities have also repurposed a €400 million support scheme from February 2019 that was to cover acute liquidity and rescue and restructuring needs of small and medium sized enterprises as a Brexit preparedness measure to now help companies cope with the Covid-19 outbreak. The scheme falls under Article 107(3)(c) TFEU.

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