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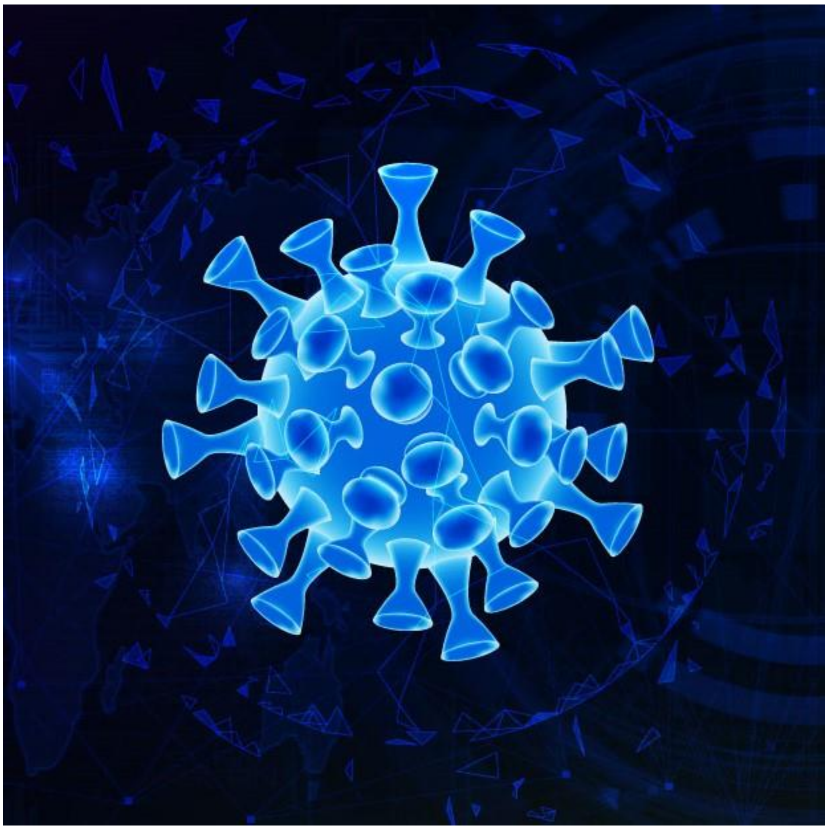

Antitrust and State Aid

Covid-19 | Legal Alert

The new European state aid Temporary Tramework to tackle the covid-19 outbreak

Pavia e Ansaldo | 26 March 2020

The European Commission has decided to take the field to face the economic emergency caused by the epidemic caused by "COVID-19" which is affecting all the Member States of the European Union with a broad action focused on the application of European standards State aid for the measures that Member States can take to respond to the COVID-19 epidemic.

The New European Temporary Framework

On March 19, 2020, the Commission announced the adoption of a new Temporary Framework for state aid measures to support the economy in the current emergency of COVID-19. The Temporary Framework allows Member States to take actions to ensure sufficient liquidity for businesses of all kinds and to preserve the continuity of their economic activity during and after the epidemic.

The Temporary Framework is based on article 107, par. 3, b) of the Treaty on the Functioning of the European Union (TFEU), which deals with aids to remedy serious disturbance in a Member State's economy.

The Commission indicates which temporary support and aid measures can be approved very quickly after notification under the new framework by the interested Member State, constantly controlling the compliance with the EU rules protecting the internal market and a common level playing field.

Under the Temporary Framework, Member States will be able to provide aid:

A. In form of direct grants, repayable advances or tax advantages:

- of an amount not exceeding EUR 800,000 per undertaking;
- to companies that were not in difficulty as of December 31, 2019;
- for a maximum duration until the 31 of December 2020.

B. In the form of guarantees on loans for SMEs and big companies:

- granted no later than December 31, with no amount limit, except for a proportionality control;
- if the expiring is fixed 31 December 2020, within the limit of: (i) the double of the annual wage bill of the beneficiary; (ii) 25% of the beneficiary's turnover in 2019, or (iii) an adequate justification of the liquidity requirement;
- for a maximum duration of 6 years, covering up to 90% of the loan capital;

C. In the form of subsidised interest rates for loans:

- public loans, signed by December 31st, 2020;
- within the limit of: (i) the double of the annual wage bill of the beneficiary; (ii) 25% of the beneficiary's turnover in 2019, or (iii) an adequate justification of the liquidity requirement;
- up to a maximum duration of 6 years;
- for investment and working capital needs;

D. In the form of guarantees and loans channelled through credit institutions or other financial institutions (so called indirect aid):

- guarantees and subsidized loans referred to in points A and B may also be granted by credit institutions and other financial institutions as financial intermediaries;

E. Through a short-term export credit insurance

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Flexibility in the current framework of state aid rules: art. 107, par. 2, b) TFEU

In any case, it should be remembered that, in addition to what is now allowed under the

Temporary Framework, Member States can implement support measures within the already existing state aid rules, such as those concerning aid granted on damage resulting from natural disasters or exceptional circumstances (art. 107, par. 2, b) TFEU).

In fact, such provision allows Member States to introduce support measures for companies that have suffered damage caused by natural disasters or exceptional events.

Therefore, the Commission focused on sectors that has been already strongly affected by the consequences of the epidemic (such as health, tourism, culture, retail and transport), with respect to which all the previous regime will remain in force, but at the same time, in order to avoid delays resulting from the excessive duration of the approval procedures, published a quicker notification procedure.

In this regard and by way of example, on 12 March 2020, the Commission authorized within 24 hours the first request for support from a Member State on a COVID-19 issue, in relation to an aid scheme set up by the Danish Government, which provided for the reimbursement of tickets for major events cancelled due to the epidemic.

In addition, on March 25, 2020, the Commission announced the approval of the first Italian state guarantee scheme to support SMEs directly affected by the coronavirus epidemic. In particular, the measure consists of a guarantee offered by the Italian State, to support a debt moratorium from banks, to small and medium-sized enterprises in order to support the liquidity crisis they could be subject due the pandemic.

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The Commission's comunication on a Coordinated economic response to the COVID-19 outbreak

The Temporary Framework, follows the Commission's Communication on a *Coordinated economic response to the COVID-19 outbreak* of 13 March 2020, which set out the various options available to Member States outside the scope of EU State aid rules. These include measures applicable to all undertakings regarding wage subsidies, suspension of payments of corporate and value added taxes or social welfare contributions, or financial support directly to consumers for cancelled services or tickets not reimbursed by the concerned operators.

In this regard, the Commission has published a short one-page presentation on how Member States can also provide liquidity support to companies relying on the existing legal framework.

In particular, the presentation reiterates that Member States can provide support based on the State aid *de minimis* rules or the General Block Exemption Regulation (GBER), or that they can grant rescue aids in line with the Rescue and Restructuring Guidelines.

In parallel, the Commission proposed the modification of the rules on airport slot allocation – arising from the application of Regulation 95/93 – which require airlines to use at least 80% of the slots assigned in a given period of flight operations. On another and wider front, the Commission has formulated a proposal for a regulation (*Coronavirus Response Investment Initiative*) which aims to move financial resources from the European Structural and Investment Funds, to be used in business financing.

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The team of experts of Pavia and Ansaldo Studio Legale has gained significant experience, with public and private bodies, in providing assistance on all matters relating to state aid, including their effectiveness and feasibility, as well as in all phases of the litigation connected to them.