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State Aid to Combat Covid-19

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Abstract

This paper examines the state aid measures that Member States have implemented to combat the economic effects of covid-19. It also analyses the case law on the options afforded to Member States to grant state aid to compensate companies for the impact of “exceptional occurrences” and “serious economic disturbance”. It outlines the main points of the Temporary Framework that was adopted by the European Commission on 19 March 2020 to facilitate the granting of state aid in response to covid-19 and assesses that Framework in comparison to the 2008 Temporary Framework following the then financial crisis.

Keywords: State aid, Temporary Framework, exceptional occurrence, serious disturbance, grants, loans, guarantees.

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Introduction

The European Union and the rest of the world has been hit by a new crisis in less than a dozen years. This time is the pandemic caused by the corona virus covid-19. As a result, many governments have ordered their citizens to remain at home, economic activity has come to a halt and most economies are teetering on the brink of recession.

The purpose of this paper is to review the emergency measures that have been adopted by Member States across the EU to support companies and the self-employed. The paper examines how these measures comply with the EU rules of competition and how the prevent state aid from being granted to financial institutions. Under the rules adopted in 2014, state aid to financial institutions immediately triggers their resolution or liquidation.

The structure of the paper is as follows. First, it presents the principles for determining whether a public measure constitutes state aid and the conditions under which public support to companies to counteract the effects of the pandemic may not involve state aid. Second, it analyses the case law on the exceptions to the prohibition of state aid in cases of “exceptional occurrences” and “serious economic disturbance”. Third, it outlines the main points of the Temporary Framework that was adopted by the European Commission on 19 March 2020 and revised on 3 April 2020 for the purpose of facilitating the granting of state aid to combat the economic effects of covid-19. It concludes with an assessment of the Temporary Framework.

The policy developments in response to covid-19 are rapid. The information contained in this paper is valid as of 3 April 2020.

Presence of state aid in public measures to counteract the impact of covid-19

For a public measure to constitute state aid it must fall within the scope of application of Article 107(1) TFEU. The text of Article 107(1) is as follows:

“Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.”

It is now well-established in the case law of the EU that Article 107(1) lays down four criteria which must all be satisfied in order for a public measure to constitute state aid. The four criteria are the following:

1. state resources are transferred to an undertaking,
2. the recipient undertaking obtains an advantage in the form of reduction of its normal costs,
3. the advantage is selectively available only to certain instead of all undertakings and
4. the recipient undertaking operates in a sector where there is cross-border trade and the aid distorts competition by placing the recipient in a more favourable position than its competitors.

Some of the emergency measures that have been adopted by European governments to counteract the impact of covid-19 on their economies do not involve state aid because one more of the criteria of Article 107(1) are not satisfied. These measures are not classified as state aid either because they support non-undertakings [e.g. extra social insurance payments to individuals] or because they are general in the application [e.g. reduction of corporate tax rates across the board or delay in the payment of taxes and employers' social insurance contributions].

However, most measures that support enterprises are indeed classified as state aid because they satisfy all four criteria of Article 107(1). Since, in principle, state aid is prohibited, it can only be granted if it fits into a category of exemption defined in the Treaty. Two categories of exemption have been utilised: aid “to make good the damage caused by a natural disaster or exceptional occurrence” in accordance with Article 107(2)(b) TFEU and aid “to remedy a serious disturbance in the economy” of Member States in accordance with Article 107(3)(b) TFEU.

The fact that a public measure seeks to compensate for the damage caused by an exceptional occurrence or a serious disturbance does not mean that it does not confer an advantage in the meaning of Article 107(1). As explained by EU courts and the Commission in multiple cases [see, for example, the judgment in case T-52/12, Greece v European Commission; or Commission decision 2020/394 on compensation for large forest fires], advantage is a benefit an undertaking cannot obtain from the market under “normal” conditions. The normal state of the market is not that of perfect competition or of absence of any natural disaster or economic disruption. It is the state of the market without government intervention. Therefore, a company that has suffered damage still receives an advantage even when the aim of the state measure is merely to remediate the damage and bring it back to its position before the disaster or the disruption.

During March 2020, Member States notified a number of measures to the European Commission in compliance for their obligation under Article 108(3) TFEU. DG Competition of the Commission has established a special website with information on the rules applicable to state aid to combat covid-19.² At the time of writing of this paper, the Commission had authorised 16 such measures by 9 Member States. The majority of the measures (9) provided guarantees on loans for investment or working capital, while 6 measures provided grants while only 2 measures subsidised the interest rates of new or existing loans.

As mentioned above, Member States notified their measures to the Commission for prior authorisation. Article 108(3) TFEU requires Member States to inform the Commission of any new aid. Failure to do so renders a state aid measure automatically illegal. For this reason the General Block Exemption Regulation [Regulation 651/2014] relieves Member States from the obligation to notify new aid. Article 50 of the GBER lays down rules for the design of state aid measures to compensate for the cost of damage caused by natural disasters. However, the GBER contains no provision for compensation to

² The website can be accessed at:

https://ec.europa.eu/competition/state_aid/what_is_new/covid_19.html

redress the effects an exceptional occurrence. Since the covid-19 pandemic is classified as an exceptional occurrence rather than natural disaster, Member States had to notify their state aid measures to the Commission. It must be noted that the Commission approved those measures in a record time of just a few days rather than the statutory period of two months. Most of the Commission decisions are not yet public. The text of only six such decisions has so far been published.

The next two sections examine the concepts of “exceptional occurrence” and “serious disturbance”.

Exceptional occurrence

Article 107(2)(b) declares that aid is compatible with the internal market for the purpose of making “good the damage caused by a natural disaster or exceptional occurrence”. Even though the Treaty itself stipulates that such aid is compatible with the internal market and therefore exempted from the prohibition in the first paragraph of Article 107, it is a derogation from the principle in Article 107(1) and, as such, it must be interpreted narrowly.

It is now well understood that three conditions must be satisfied for aid to be exempted on the basis of Article 107(2)(b):

Exceptionality: The event must be i) unforeseen or unpredictable, ii) out of the bounds of normality and iii) have a large or significant impact. The following have been found to be exceptional: war, terrorist attack, civil strife, strikes, major nuclear, maritime or industrial accidents, large fires and epidemics. This is not an exhaustive list. Member States who claim they have been hit by an exceptional occurrence must, however, prove that indeed it is out of the range of normal or expected events. An event is exceptional when it is out of the control of those who are affected by it such as, for example, an oil spill caused by a marine accident, an explosion at a chemical plant or a pandemic. The collapse of a market for a product resulting from loss of consumer confidence is such an event [see, for example, Commission decision N 437/2001 concerning the BSE crisis in Belgium]. Events caused by negligence cannot be considered to be exceptional [see, for example, Commission decision NN 44/2009 concerning dioxin contamination of meat products in Ireland]. See also the following decisions: NN 62/2000 concerning an oil spill caused by the sinking of oil tanker Erika; N 217/2002 concerning an explosion at a fireworks factory in Enschede, Netherlands; N 241/2002 concerning an explosion at a chemical plant in Toulouse, France.

Causality: There must be a direct link between the exceptional occurrence and the damage that is suffered. The damage does not have to be limited to physical damage. It can also be financial such as loss of income. [See, for example, T-268/06, Olympic v European Commission concerning compensation for the cost of cancelled flights in the immediate period after the terrorist attack in New York in September 2001. See also Commission decision SA.32163 concerning loss of income from the closure of air space in Slovenia as a result of the eruption of an Icelandic volcano in 2010.]

Proportionality: The amount of aid may cover 100% of the damage or loss but may not exceed the total cost of the damage. In addition, the cost of the damage that can be compensated must be net of any insurance pay out. In addition, the compensation must be calculated at the level of the individual

beneficiary. See, for example, cases SA.33487 concerning a burst red sludge reservoir in Hungary; and SA.32163 concerning loss of income from the closure of air space in Slovenia.

Typical mistakes by Member States

In certain cases Member States failed to demonstrate that the damage was caused by a truly exceptional occurrence. For example, in its judgment in case C-346/03, *Atzeni*, concerning preferential loans to farmers as a compensation for a crisis caused by high rates of interest, the Court of Justice ruled that high rates of interest rate are normal market risk. Equivalently, adverse weather conditions do not amount to a natural disaster. The conditions must be severe enough and to cause extensive damage. A similar conclusion was reached by the Commission in decision 2003/293 without being contradicted by the Court of Justice in the subsequent case C-73/03, *Spain v European Commission*. Aid to farmers to alleviate a sharp increase in the price of fuel could not be exempted on the basis of Article 107(2)(b) because price increases cannot be considered abnormal practices. More recently, the Commission in its decision 2008/936 concerning compensation of fishermen for high fuel prices in France observed that fluctuations in oil prices were inherent in economic activity. Moreover, fluctuations also affected other sectors of the economy which consumed petroleum products.

But, by far, the most frequent mistake of Member States is failure to prove that the alleged damage is caused by the exceptional occurrence. In case C-278/00, *Greece v European Commission*, the Court of Justice was not convinced that farmers' losses were linked to the Chernobyl nuclear disaster or how the aid was limited to such losses. In case C-73/03, *Spain v European Commission*, the Court of Justice disagreed that aid in the form of tax relief on land sold and in the form of subsidies for loans were linked to the amount of damage suffered as a result of a hike in fuel prices. The Court also rejected as incorrect the use of average fuel consumption per farm as an indicator of damage suffered by individual farms.

Serious disturbance

While aid in conformity with Article 107(2)(b) is compatible with the internal market, the Treaty says that aid granted on the basis of Article 107(3)(b) may be compatible with the internal market. The fact that the Treaty uses the words "may be" instead of "is" means that the discretion of the Commission is much wider. This is because only the Commission has powers to determine the compatibility of state aid with the internal market. A rarely used exception to the rule that it is the Commission that determines the compatibility of state aid with the internal market is embedded in Article 108(2). This exception, however, applies only as long as the Commission has not decided on an aid measure. It is rarely used because the compatibility decision has to be taken by the Council unanimously.

All of the 550 or so measures that have been adopted since 2008 to support financial institutions are based on Article 107(3)(b). Until the financial crisis broke out in 2008, Article 107(3)(b) had rarely ever been used. This is because the "disturbance" has to be "serious" [= large or significantly disruptive] and affect the entire economy of a Member State. The seminal judgments in cases C-301/96, *Germany v European Commission* and T-132/96, *Freistaat Sachsen v European Commission* have made it clear

that it is not enough that a region or a sector of the economy is disturbed. The whole economy must be affected to a large extent or high degree.

The Commission in decision 2018/1040 concerning state aid to the Greek rail operator explained that the disturbance has to be “serious”: “(211) The scale and duration of the economic contraction ... goes well beyond the challenges experienced by Member States' economies in the context of the standard business cycle, in which economic slowdowns must be accepted as a part of the normal pattern of growth and development.” In other words a disturbance is “serious” in the meaning of Article 107(3)(b) when goes beyond the bounds of normal disruption of economic activity or “normal” economic shocks.

In addition, the disruption has to affect the entire economy of a Member State. It should be noted that in its decisions on financial institutions the Commission seems to have accepted that a serious disturbance can have a direct and, what may be called, a “knock-on” effect, both of which may qualify for state aid. The direct effect was the impact on financial institutions from widespread bankruptcies in many sectors of the real economy. The knock-on effect was the subsequent impact on the real economy and the rest of the banking system from the potential failure of a systemic financial institution. The possibility of a knock-on effect is even better demonstrated by two Commission decisions which authorised state aid on the basis of Article 107(3)(b) to non-financial institutions.

In decision 2018/1040, the Commission acknowledged the importance of uninterrupted functioning of the Greek railways to the rest of the economy. The Commission took into account “(219) the nature and the objective seriousness of the disturbance of the economy of the Member State concerned” and also “the possibly systemic importance and position of the beneficiary and the sector concerned.” It eventually concluded that “(225) the aid addresses a specific risk for the Greek railway system, and the dramatic consequences of discontinuation of the supply of rail transport services for the Greek economy and the population, ... In light of these extraordinary and specific circumstances which the Greek railway sector, being unequalled sector of the Greek economy ..., is facing, the State aid ... is found to have the legitimate aim of remedying a serious disturbance of the Greek economy.”

Similarly, in decision SA.36323 concerning state aid to the incumbent electricity and gas operators in Greece, the Commission again identified “(87) the crucial importance of the sector for the functioning of the economy of a Member State at all levels”.

It is therefore, safe to conclude that aid to remedy a serious disturbance to the economy of a Member State may be granted not only when an unprecedented economic shock hits an entire economy but also when, as a result of such a shock, an undertaking with systemic importance experiences severe difficulties that require tailor-made remedial measures.

In response to the 2008 financial crisis, the Commission adopted a series of guidelines on state aid to financial institutions and in December 2008 introduced a Temporary Framework for state aid to the

real economy.³ Similarly, on 19 March 2020, the Commission adopted a new Temporary Framework to give guidance to Member States and ensure a level playing field and minimise the potential negative impact on trade and competition in the internal market. Before reviewing the provisions of the 2020 Temporary Framework and the few schemes that have been authorised so far, it is instructive to consider, first, what lessons may be drawn from the application of the 2008 Temporary Framework.

Lessons from the 2008 Temporary Framework

The innovation of the Temporary Framework was that it allowed Member States to grant operating aid. We will see that the 2020 Temporary Framework performs the same function. Operating aid is not normally allowed because it does not induce recipients to do something they would not otherwise do without the aid.

However, when the economy is facing an unprecedented shock whose ripple effect can cause successive bankruptcies, operating aid in the form of temporary liquidity can enable companies to withstand abrupt loss of supplies or customers.

The 2008 Temporary Framework, like its 2020 counterpart, was pretty lenient by allowing operating aid, but at the same time it imposed certain restrictions in the form of thresholds, safeguards and exclusions. Member States were required to notify to the Commission their measures for prior authorisation and demonstrate how they intended to comply with those restrictions.

Measures deviating from the provisions of the Temporary Framework were not approved by the Commission. In case T-52/12, *Greece v European Commission*, the General Court agreed with the Commission's finding that aid granted by Greece to farmers could not be authorised on the basis of the Temporary Framework because agricultural products excluded from the scope of its application. On appeal, Greece argued that the Commission should have applied Article 107(3)(b) directly. The Court of Justice rules in its judgment in case C-431/14 P, *Greece v European Commission*, that, first, the Commission is bound by its own guidelines and may not deviate from their provisions. Second, the guidelines do not bind Member States. However, it is for Member States to justify why Article 107(3)(b) should be applied directly. In this case, the Court found that Greece had failed to prove the existence of any specific exceptional circumstances that necessitated deviation from the Temporary Framework.

In another notable case, T-423/14, *Larko v European Commission*, also involving a Greek company, the General Court confirmed the correctness of the Commission's assessment in decision 2014/539. Larko was a large mining company which had run into financial trouble. The Greek authorities granted it state aid, allegedly in compliance with the Temporary Framework. However, the Commission found, and the General Court agreed with it, that Larko was in difficulty before the Temporary Framework came into force and, therefore, its difficulties could not be attributed to the financial crisis of 2008. Moreover, the

³ OJ C16, 22 January 2009. It can be accessed at:

[https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52009XC0122\(01\)](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52009XC0122(01))

state guarantee that was granted to it covered 100% of an underlying loan and the amount of the loan exceeded the threshold defined in the Temporary Framework.

In a similar case, the Commission found, in decision 2011/269, that aid granted by Hungary to Nitrogénművek Vegyipari, a producer of fertilisers, was not compatible with the 2008 Temporary Framework because i) it was not granted in the context of an aid scheme, ii) the amount of aid exceeded the relevant threshold, iii) the fee for a state guarantee fell below the minimum rate imposed by the Temporary Framework and iv) the amount of aid the relevant limit.

Lastly, it should be mentioned that several Member States managed to “escape” from the confines of the 2008 Temporary Framework by petitioning directly the Council for approval on the basis of Article 108(2). In cases, C-121/10, European Commission v Council [concerning Hungary], C-118/10, European Commission v Council [concerning Latvia], C-117/10, European Commission v Council [concerning Poland] and C-111/10, European Commission v Council [concerning Lithuania], the Court of Justice rejected the actions brought by the Commission against state aid that those four Member States had granted for the purchase of agricultural land in contravention of the 2008 Temporary Framework. The Court ruled that, in derogation from Article 107 and the regulations adopted on the basis of Article 109, Article 108(2) allows the Council to authorise unanimously aid in exceptional circumstances as long as the authorisation is granted before the Commission decides on the relevant state aid measures.

The main provisions of the 2020 Temporary Framework

The “Temporary Framework for state aid measures to support the economy in the current COVID-19 outbreak” was adopted by the Commission on 19 March 2020.⁴

The Temporary Framework will remain in force until 31 December 2020 and allows Member States to do the following:

1. set up schemes to provide direct grants or selective tax advantages up to EUR 800,000 per company for urgent liquidity needs;
2. offer state guarantees, at subsidised premiums, for bank loans taken companies for investment and working capital, subject to certain maximum amounts;
3. subsidise interest rates for loans granted by private and public financial institutions;
4. support short-term export credit insurance.

On 3 April 2020, the Commission widened the scope of the Temporary Framework to allow aid for the following additional options:⁵

1. research on covid-19;

⁴ Communication from the Commission on a Temporary Framework of state aid measures to support the economy in the context of the COVID-19 outbreak, C(2020) 1863 final. The full text of the Temporary Framework can be accessed at: https://ec.europa.eu/competition/state_aid/what_is_new/sa_covid19_temporary-framework.pdf

⁵ The amendment of 3 April 2020 of the Temporary Framework can be accessed at: https://ec.europa.eu/competition/state_aid/what_is_new/sa_covid19_1st_amendment_temporary_framework_en.pdf

2. establishment of testing and upgrading infrastructures;
3. investment in the production of covid-19-relevant products;
4. tax deferrals and/or suspensions of employers' social security contributions;
5. wage subsidies for employees to avoid lay-offs.

The Temporary Framework explains how the channelling of aid to companies through banks [e.g. via lower rates of interest] can be achieved without it being considered as aid to the banks themselves. It also requires that any indirect aid to banks is minimised.

The Temporary Framework is divided into five sections as follows:

Section 1 reviews the economic impact of covid-19 and the need for state intervention and outlines the various state aid options available to Member States.

Section 2 explains the applicability of Article 107(3)(b).

Section 3 presents the new state aid options for Member States.

Section 4 lays down procedures for monitoring and reporting.

Section 5 contains final provisions.

Point 19 of the Framework requires that Member States must demonstrate that state aid is necessary, appropriate and proportionate to remedy the serious disturbance in their economies.

State aid options for Member States, 19 April 2020

Aid in form of direct grants, repayable advances or tax advantages

Aid may be granted on the following conditions:

1. The gross amount of the aid does not exceed EUR 800,000 per undertaking [direct grants, repayable advances, tax or payments advantages] or EUR 120,000 per fisheries undertaking or EUR 100,000 per agricultural undertaking.
2. The aid is granted in the context of a scheme with a budget.
3. Beneficiary undertakings must have not been in difficulty on 31 December 2019.
4. The aid is granted before 31 December 2020.
5. Undertakings processing and marketing agricultural products may not pass the aid to primary producers.

Aid in the form of guarantees on loans

Aid may be granted on the following conditions:

1. The guarantee is offered before 31 December 2020.
2. The guarantee may cover both investment and working capital loans.
3. The minimum level of the guarantee premium varies from 25bp to 100bp for SMEs and from 50bp to 200bp for large enterprises, depending on the maturity of the loan [1-6 years].
4. Alternatively, schemes may use above ranges as a basis, but with different maturity, pricing and guarantee coverage.

5. The guarantee may not exceed six years and may not cover more than 90% of the loan principal where losses are sustained proportionally and under same conditions, by the credit institution and the state or 35% of the loan principal, where losses are first attributed to the state and only then to the credit institution.
6. For loans that mature after 31 December 2020, certain thresholds apply with respect to the amount of the loan principal in relation to the wage bill or turnover of the beneficiary undertaking. For loans that mature before 31 December 2020, a higher amount is allowed.
7. Beneficiary undertakings must not have been in difficulty on 31 December 2019.

Aid in the form of subsidised interest rates for loans

Aid may be granted on the following conditions:

1. The loans may be both for investment and working capital.
2. The minimum rate of interest must at least be equal to the base rate on 1 January 2020 plus a risk margin varying from 25bp to 100bp for SMEs and from 50bp to 200bp for large enterprises, depending on the maturity of the loan [1-6 years].
3. Alternatively, schemes may use above ranges as a basis, but with different maturity, pricing and guarantee coverage.
4. The loan contracts are signed by 31 December 2020 and are limited to maximum six years.
5. For loans which mature after 31 December 2020, certain thresholds apply with respect to the amount of the loan in relation to the wage bill or turnover of the beneficiary undertaking. For loans which mature before 31 December 2020, a higher amount is allowed.
6. Beneficiary undertakings must not have been in difficulty on 31 December 2019.
7. This kind of aid may not be cumulated with aid for guarantees.

Short-term export credit insurance

Under existing rules, member States are allowed to support short-term credit insurance only for exports to countries with “non-marketable” risks. EU Member States are not considered to be destinations with non-marketable risks. However, the Temporary Framework acknowledges that “as a consequence of the current outbreak, it cannot be excluded that, in certain countries cover for marketable risks could be temporarily unavailable.” [pp. 9-10] In a communication that was published in the Official Journal of 28 March 2020, the Commission amended the existing rules on short-term export credit insurance and declared that “all commercial and political risks associated with exports” to all EU Member States, plus their main trading partners including the UK and US, to be “temporarily non-marketable until 31 December 2020”.⁶

New provisions added by the revised Temporary Framework on 3 April 2020

R&D on covid-19

Aid may be granted on the following conditions:

1. R&D is supported through direct grants, repayable advances or tax advantages.

⁶ OJ C1011, 28 March 2020, pp. 1-3.

2. Eligible are all costs necessary for the R&D project.
3. The maximum aid intensity is 100% for fundamental research; 75% for industrial research and experimental development + 15% in case of cross-border collaboration.
4. The aid beneficiary must grant non-exclusive licences on non-discriminatory terms to third parties.
5. Aid may not be granted to undertakings that were in difficulty on 31 December 2019.

Establishment of testing and upgrading infrastructures

Aid may be granted on the following conditions:

1. The aid is limited to the construction or upgrade of infrastructure up to first industrial deployment prior to mass production of covid-19-relevant medicinal products.
2. The aid is in the form of direct grants, tax advantages or repayable advances, and/or loss cover guarantees.
3. The investment project must be completed within four months after the aid application.
4. Eligible costs are the investment costs necessary.
5. The maximum aid intensity is 60% + 15% if the investment is concluded within two months or if the support comes from more than one Member State.
6. The infrastructure must be open to multiple users and services must be charged at market rates.
7. Aid may not be granted to undertakings that were in difficulty on 31 December 2019.

Investment in the production of covid-19-relevant products

Aid may be granted on the following conditions:

1. The investment is for the production of covid-19-relevant vaccines, medical products and treatments, medical devices, etc.
2. The aid is in the form of direct grants, tax advantages or repayable advances, and/or loss cover guarantees.
3. The investment project is completed within four months after the aid application.
4. Eligible are all investment costs necessary.
5. The maximum aid intensity is 75% + 15% if the investment is concluded within two months or if the support comes from more than one Member State.
6. Aid may not be granted to undertakings that were in difficulty on 31 December 2019.

Tax deferrals and/or suspensions of employers' social security contributions

Aid may be granted on the following conditions:

1. Public support must be limited to temporary deferrals of taxes or social security contributions which apply to companies that are particularly affected by the covid-19 outbreak.
2. The end date for the deferral must not be later than 31 December 2021.

Wage subsidies for employees to avoid lay-offs

Aid may be granted on the following conditions:

1. Public support must be the avoidance of lay-offs during the covid-19 outbreak.
2. Aid is in the form of schemes to companies in specific sectors, regions or of a certain size that are particularly affected by the covid-19 outbreak.

3. The wage subsidy is granted for a period of not more than twelve months.
4. The monthly wage subsidy may not exceed 80% of the monthly gross salary.
5. Aid may not be granted to undertakings that were in difficulty on 31 December 2019.

Minimisation of the indirect benefits of aid channelled through financial institutions

The Temporary Framework takes into account that guarantees on loans and interest subsidies may provide indirect benefits to financial institutions, even though the direct beneficiaries are the borrowers who are companies in sectors other than banking. The Commission clarifies that such indirect aid would not be qualified as “extraordinary public financial support” according to Article 2(1) of Directive 2014/59 on Bank Recovery and Resolution and Article 3(1) of Regulation 806/2014 establishing the Single Resolution Mechanism. Therefore, it would not lead to resolution or liquidation of banks that may derive indirect benefits.

Nonetheless, the Temporary Framework introduces safeguards to minimise any indirect aid. Banks are expected to pass on as much as possible the advantages of the public guarantees or subsidised interest rates on loans to the final beneficiaries through higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates.

The measures that have been approved by the Commission, as of 3 April 2020 are shown in Table 1 below.

Table 1: State aid measures authorised by the Commission in response to covid-19

MS	Number	Legal basis	Grants	Guarantees	Loans
DK	SA.56685	Art 107(2)(b)	X	For event cancellation	
IT	SA.56690	Art 107(3)(b)		X	
DK	SA.56708	Art 107(3)(b)		X	
FR	SA.56709	Art 107(3)(b)		X	
DE	SA.56714	Art 107(3)(b)			X
LV	SA.56722	Art 107(3)(b)		X	X
LU	SA.56742	Art 107(3)(b)	X		
PT	SA.56755	Art 107(3)(b)		X	
FR	SA.56765	Art 107(2)(b)	X	Airline tax exemption	
IT	SA.56786	Art 107(3)(b)	X		
DE	SA.56787	Art 107(3)(b)		X	
DE	SA.56790	Art 107(3)(b)	X		
DK	SA.56791	Art 107(2)(b)	X	For self-employed	
UK	SA.56792	Art 107(3)(b)		X	
UK	SA.56794	Art 107(3)(b)	X		
ES	SA.56803	Art 107(3)(b)		X	
EE	SA.56804	Art 107(3)(b)		X	X
LU	SA.56805	Art 107(3)(b)		X	

DK	SA.56808	Art 107(3)(b)		X	
FR	SA.56823	Art 107(3)(b)	X		
MT	SA.56843	Art 107(3)(b)		X	
IE	SA.56845	Art 107(3)(b)	X		
ES	SA.56851	Art 107(3)(b)	X	X	X
EL	SA.56857	Art 107(3)(b)		X	
SE	SA.56860	Art 107(3)(b)		X	
DK	SA.56863	Art 107(3)(b)			X
DE	SA.56863	Art 107(3)(b)			X
PL	SA.56876	Art 107(3)(b)		X	
NL	SA.56915	Art 107(3)(b)	X		
16	29	3/26	11	16	6

Source: European Commission

What is surprising, given the severity of the pandemic, is that so far only about half of Member States have had measures approved by the Commission. Perhaps the remaining Member States have provided support via general measures that do not constitute state aid. It is also possible, of course, that notified schemes have not yet been authorised by the Commission.

As of 3 April 2020, most Member States have opted for favourable guarantees on loans, which are in some cases supplemented with direct grants. The least preferred option is interest-rate subsidies. Perhaps Member States believe that what companies need is temporary liquidity to survive the downturn in the next month or two and that afterwards normal economic activity will resume in earnest. So they should be helped to obtain loans [i.e. subsidised guarantees] rather than repay loans [i.e. subsidised interest-rates]. Whether access to liquidity is the major problem and whether economic activity will return to its pre-pandemic levels without leaving any lasting scars are unknown at this stage.

Also, the revision of the Temporary Framework and the inclusion of five new options for Member States may soon change significantly the picture portrayed by Table 1. As the crisis deepens and unemployment rise, Member States may choose to redirect their subsidies and support instead wages and employers' social insurance contributions.

It is impossible to carry out an economic assessment of the adopted measures as they were implemented only a very recently. It is also very difficult to forecast their impact as the few Commission decisions that are published are very short and contain only summaries of the main features of the various schemes with no data on actual amounts of aid disbursed.

An assessment and conclusions

The Commission has acted quickly and boldly, just as it did in 2008. The 2020 Temporary Framework is simpler, clearer, more generous and wider than its 2008 counterpart. It is simpler because it defines

new rules, while the 2008 Framework defined the rules as a deviation from the then existing rules without considering that perhaps the then existing rules did not fit the needs of Member States and their companies.

The 2020 Framework is clearer because it is explicit on the minimum rates of premiums and interest rates that should be charged. By contrast, the 2008 Framework stipulated, for example, that for guarantees “Member States grant a reduction of up to 25 % of the annual premium to be paid for new guarantees granted in accordance with the safe-harbour provisions of the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees”. This means that Member States must first calculate the safe-harbour rates; a task that is difficult when risks multiply. Similarly, for interest-rate subsidies, the 2008 Framework required that “loans are granted at an interest rate which is at least equal to the central bank overnight rate plus a premium equal to the difference between the average one year interbank rate and the average of the central bank overnight rate over the period from 1 January 2007 to 30 June 2008, plus the credit risk premium corresponding to the risk profile of the recipient, as stipulated by the Commission Communication on the revision of the method for setting the reference and discount rates”. Again this is a difficult task when risk profiles cannot be determined on the basis of pre-existing data.

The 2020 Framework is more generous on grants allowing aid up to EUR 800,000, while the 2008 Framework permitted aid only up to EUR 500,000. The amount of EUR 800,000 is 25% higher than EUR 500,000 adjusted for inflation. If EUR 500,000 were put in an interest-bearing account in 2008 and received 2% interest, twelve years later it would have grown only to EUR 634,000.

Lastly, after its revision and the expansion of the options for Member States, the 2020 Framework is definitely wider in scope. Not only does it seek to support firms harmed by the pandemic, it also allows for aid to firms that are likely to gain from the pandemic such as those that manufacture protective equipment or produce medications or provide testing facilities. In a sense, the revision of the current Framework has made it more imaginative.

In contrast to the 2020 Framework, the 2008 Framework was largely silent on indirect aid to banks. It only required that “Member States ensure that the aid is not directly or indirectly transferred to financial entities”. Of course there was no BRRD or SRMR at the time. But it was again difficult for Member States to know how to ensure that no aid was indirectly transferred to banks. In fact, it was rather impossible for banks not to derive some indirect aid. The 2020 Framework is more realistic, because it requires only minimisation of indirect aid, and more user-friendly because it provides guidance to Member States on how to minimise the indirect aid.

In conclusion, the 2020 Temporary Framework is a good example of the old saying that “practice makes perfect”. Well, it is not perfect but it is surely better than its 2008 counterpart because the Commission has acquired much experience since then in dealing with crises, exceptional occurrences and serious economic disturbances. The 2008 Temporary Framework was supposed to be in force only for two years, but in the end it proved not to be so temporary. It had to be extended for an additional twelve

months after its initial expiry date of 31 December 2010. The current Framework is intended to be in force only for 10 months, until 31 December 2020. Let's hope that the Commission is not overly optimistic.