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State Aid to Mitigate the Economic Downturn Triggered by the COVID-19 Pandemic

An Assessment of the European Commission's COVID-19 State Aid Conditions

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A Temporary Framework released by the EU Commission sets up the conditions that COVID-19-related State aid measures have to fulfil in order not to violate EU law. cep gives the following assessment:

- The Temporary Framework increases legal certainty for all parties and accelerates the procedures for the approval of aid measures.
- The strict conditions set up by the Temporary Framework ensure that the benefits of State aid outweigh the distortions of competition caused by such measures.
- The Temporary Framework can nevertheless affect the level playing field, as each Member State independently grants state aid according to both national preferences and the diverging fiscal space.

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1 Introduction

Starting in late 2019, COVID-19 has spread around the world, affecting all Member States of the EU. The measures taken to combat the outbreak range from social distancing to the full lock-down of entire Member States. They are having a devastating effect on the economy of the whole EU, which is experiencing its deepest recession since the Great Depression.[1] To sustain their economies, Member States have reacted by providing liquidity to struggling undertakings and citizens alike. Some of the measures taken are bound to have an impact on the internal market, which is why the European Commission has released its "Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak"[2], which lays out the conditions under which the Commission will deem aid measures compatible with the internal market.

As the unprecedented circumstances are forcing Member States to provide vast amounts of aid, this cep**Input** will assess the economic consequences which the design of the aid measures contained in the Temporary Framework will have on the internal market. Section 2 will set out the concept of State aid in EU law. Section 3 will introduce the aid measures foreseen in the Temporary Framework. Section 4 will assess the economic consequences of these measures.

2 What is State aid?

EU State aid law aims to limit distortions of competition in the internal market by preserving a level playing field and combating protectionism.[3] The key provisions on State aid in primary EU law are Art. 107 and Art. 108 of the Treaty on the Functioning of the European Union (TFEU). Art. 107 (1) TFEU states the general rule that State aid is unlawful.

In defining what State aid is, the Court of Justice of the European Union ("CJEU") relies on four criteria:[4]

- Intervention by the Member State or through state resources,
- Advantage for the recipient,
- Selectivity, and
- Effect on trade and competition.

In assessing the first criterion, an intervention by the Member State or through state resources, the CJEU considers two cumulative aspects: whether the funds used stem from the state and whether the measure in question can be imputed to the state.[5] Consequently, e.g. financial assistance granted by a publicly owned undertaking without the involvement of the public authorities is not State aid.[6]

An advantage can take many forms, e.g. direct subsidies, tax exemptions, preferential interest rates, favourable loan guarantees, indemnities against losses, the deferment of the collection of fiscal or social contributions, or measures that mitigate the charges that an undertaking would normally bear.[7] Of crucial importance for the assessment is the "private investor test". If the measure taken by the state would not

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1 https://ec.europa.eu/commission/presscorner/detail/en/ip_20_799.

2 European Commission (2020), Communication C(2020) 1863 of 19 March 2020, Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak [Temporary Framework].

3 European Commission (2012), COM(2012) 209 of 8 May 2012, EU State Aid Modernisation (SAM), para. 15.

4 For a detailed discussion of these criteria see Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union.

5 Bartosch, A. (2020) EU-Beihilfenrecht, 3rd ed., Art. 107 Abs. 1 TFEU para. 190.

6 CJEU, Case C-482/99 (France/Commission), Judgment of 16 May 2002, ECLI:EU:C:2002:294, para. 52.

7 Craig, P. / de Búrca, G. (2015), EU law, 6th ed., p. 1133.

have been taken by a private investor – e.g. a private investor would have charged a higher interest rate than the state did – it confers an advantage on the recipient.[8]

The selectivity criterion requires a differentiation "between general measures of economic policy and measures that benefit certain undertakings at the expense of others in a comparable situation."[9] Therefore, general measures such as a VAT reduction that applies across all sectors of the economy are not selective and do not constitute State aid, whereas a VAT exemption that only applies to doctors is selective[10].

A measure is considered to have an effect on trade and competition if it strengthens the position of an undertaking compared to other undertakings within the EU.[11] In that vein, according to the *de minimis* regulation, measures granted by a Member State to a single undertaking that do not exceed EUR 200,000 over a period of three years are deemed not to constitute State aid.[12]

That being said, not all measures that qualify as State aid are unlawful. In some cases, EU law considers the benefit of an aid measure to outweigh its disadvantages. In these circumstances, the aid is deemed compatible with the internal market. The three most important groups of such exemptions are set out below:

- **State aid measures that are compatible per se with the internal market** [Art. 107 (2) TFEU]. Notably, this includes aid that compensates for damage caused by natural disasters or exceptional occurrences [Art. 107 (2) (b) TFEU]. Aid measures covered by Art. 107 (2) TFEU must be notified to and approved by the Commission [Art. 108 (3) TFEU]. The Commission, however, has no discretion and must declare such aid lawful.
- **State aid measures that may be considered to be compatible with the internal market** [Art. 107 (3) TFEU]. This includes the following, which are of particular relevance in the COVID-19 crisis,
    - aid to remedy a serious disturbance in a Member State's economy [Art. 107 (3) (b) TFEU] and
    - aid to facilitate the development of certain economic activities or areas [Art. 107 (3) (c) TFEU].

  Aid measures covered by Art. 107 (3) TFEU also require notification and approval of the Commission [Art. 108 (3) TFEU]. Here, the Commission enjoys a wide discretion as to whether it declares them compatible with the internal market or not. In this regard, the Commission assesses whether the overall balance is positive by comparing the aid's positive effects with its distortive effects on competition and trade.[13]
- **State aid measures covered by a Commission regulation** [Art. 108 (4) TFEU]. According to this provision, the Commission may adopt regulations relating to certain categories of State aid, which are thereby declared compatible with the internal market ("Block Exemption Regulation"). Such aid is lawful per se and does not require notification to the Commission. The most important example is the General Block Exemption Regulation[14], which declares specific categories of aid – inter alia regional aid, aid for environmental protection, and aid for broadband infrastructures – compatible with the internal market if the aid fulfils certain conditions.

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[8] Chalmers, D. / Davies, G. / Monti, G. (2014), European Union Law, 3rd ed., p. 1061.

[9] Chalmers, D. / Davies, G. / Monti, G. (2014), European Union Law, 3rd ed., p. 1063.

[10] CJEU, Case C-172/03 (Wolfgang Heiser/Finanzamt Innsbruck), Judgment of 3 March 2005, ECLI:EU:C:2005:130, para. 39 ff.

[11] CJEU, Case 730/79 (Philip Morris/Commission), Judgment of 17 September 1980, ECLI:EU:C:1980:209, para. 11; Craig, P. / de Búrca, G. (2015), EU law, 6th ed., p. 1138.

[12] Art. 3 (1) and (2) of Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, ELI: http://data.europa.eu/eli/reg/2013/1407/oj.

[13] Chalmers, D. / Davies, G. / Monti, G. (2014), European Union Law, 3rd ed., p. 1077 f.

[14] 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, ELI: http://data.europa.eu/eli/reg/2014/651/oj

3 State aid in times of Corona

In order to provide Member States with a guideline on how to tackle the difficulties undertakings are facing by using state aid measures, while at the same time maintaining the integrity of the internal market and ensuring a level playing field,[15] the Commission published, in March 2020, a Communication[16] on a "Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak". It was amended by three further communications in the following months.[17]

Within the Temporary Framework, the Commission, first, clarifies which support measures require the approval of the Commission [Art. 108 (3) TFEU] and which can be implemented by the Member States without the Commission's involvement. Second, building on this, the Commission lists 11 COVID-19-related State aid measures and the conditions under which they are lawful. The Commission sets out the following approval rules:

- General support measures that apply to all undertakings – e.g. suspension of payments of taxes – do not constitute State aid and consequently do not have to be notified to and approved by the Commission.
- State aid measures in line with a Block Exemption Regulation do not require the Commission's involvement either.[18]
- State aid measures that merely compensate for damages caused directly by the COVID-19 outbreak are lawful under Art. 107 (2) (b) TFEU but require Commission approval.[19]
- State aid measures that meet the conditions established in the Temporary Framework and thereby comply with the provisions of either Art. 107 (3) (b) or (c) TFEU must be approved by the Commission.

While the aid measures contained in the first Communication focused on maintaining or providing liquidity (e.g. through grants, guarantees and loans), subsequent amendments widened the Temporary Framework's scope of application. The first amendment[20] dealt with actively combating the effects of the COVID-19 outbreak through measures aimed at expanding research programmes on the disease and upscaling the production of e.g. protective equipment and at preserving employment via wage subsidies. The second amendment[21] introduced aid measures for the recapitalisation of otherwise viable non-financial undertakings. The third amendment[22] dealt with existing measures, notably (1) to provide support for micro and small undertakings[23] that were in financial difficulty prior to the COVID-19 outbreak, (2) to make self-employed individuals eligible for wage subsidies, and (3) to soften recapitalisation conditions where the state

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15 Temporary Framework para. 16. For reader's convenience the paragraph number refers to the – unofficial – consolidated version of the Temporary Framework.

16 C(2020) 1863.

17 European Commission (2020), Communication C(2020) 2215 of 3 April 2020, Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak; European Commission (2020), Communication C(2020) 3156 of 8 May 2020, Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak; European Commission (2020), Communication C(2020) 4509 of 29 June 2020, Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak.

18 Temporary Framework para. 13.

19 Temporary Framework para. 15.

20 European Commission (2020), Communication C(2020) 2215 of 3 April 2020, Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak.

21 European Commission (2020), Communication C(2020) 3156 of 8 May 2020, Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak.

22 European Commission (2020), Communication C(2020) 4509 of 29 June 2020, Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak.

23 Defined as undertakings which employ fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.

injects equity jointly with private investors. Most of the aid measures contained in the Temporary Framework entail general aid schemes rather than aids to individual undertakings.

Thus, the Temporary Framework lists 11 State aid measures and a comprehensive set of conditions which each of them must fulfil in order not to violate EU law. The 11 State aid measures are[24]:

1. **Grants, tax advantages, repayable advances, loans and equity** up to an amount of EUR 800.000.
2. Public **guarantees on** individual **loans** in response to the COVID-19 outbreak.
3. **Subsidised interest rates** to public loans.
4. Aid in the form of guarantees and loans according to **1., 2. and 3.** either directly or **through credit institutions** and other intermediaries.
5. **Short term export insurance** against commercial and political risks associated with exports to a Member State, the UK, Australia, Canada, Iceland, Japan, New Zealand, Norway, Switzerland or the USA;[25] these risks are non-marketable[26] until 31 December 2020.
6. **Aid for COVID-19 relevant research**.
7. **Investment aid for** the construction or upgrade of **testing and upscaling infrastructure for COVID-19 relevant medical products**.
8. **Investment aid for the production of COVID-19 relevant products**.
9. Temporary **deferrals of taxes or of social security contributions** which apply to undertakings that are particularly affected by the COVID-19 outbreak.
10. **Wage subsidies**.
11. **Recapitalisation measures** in the form of equity and/or hybrid capital instruments to undertakings facing financial difficulties due to the COVID-19 outbreak.

Each of these measures must fulfil specific and very detailed conditions in order for the Commission to approve such aid. Table 2 in the Annex summarises the main conditions that apply to the aid measures. Two conditions apply to most aid measures (Table 1):

Tab. 1: General conditions for State aid in the Temporary Framework

Condition	Aid measures to which it applies
Maximum amount of aid that each undertaking can receive	(1), (2), (3), (6), (7), (8), (10)
Viability before the COVID-19 outbreak Exception: small and micro undertakings that (1) are not subject to insolvency proceedings, (2) have not received rescue aid without repaying it and (3) are not subject to a restructuring plan after receiving restructuring aid	(1), (2), (3), (6), (7), (8), (11)

4 Assessment

4.1 Economic assessment

The individual measures contained in the Temporary Framework can support undertakings that are negatively affected by the policies implemented to contain COVID-19. The measures rightfully contain strict conditions, generally capping the amount of aid that each undertaking can receive and – in principle – limiting

[24] For details, see Table 2 in the Annex.

[25] The annex to European Commission (2012), 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, OJ 2012/C 392/01, lists these states as – under normal conditions – marketable risk countries.

[26] "Marketable risks" means commercial and political risks with a maximum risk period of less than two years, on public and non-public buyers in one of the aforementioned countries; all other risks are considered non-marketable.

aid to undertakings that were viable before the COVID-19 outbreak. These conditions ensure that the benefits of State aid outweigh the distortions of competition caused by such measures. Even the exception introduced for non-viable micro and small undertakings does not contradict this logic. While accounting for 83.7% of the undertakings exporting goods intra-EU, micro and small undertakings only produce 17.9% of the trade value.[27] State aid to non-viable micro and small undertakings is thus less likely to affect intra-EU trade. Moreover, such an exception allows for the support of start-ups, which may be in a phase of growth without yet making profits. Supporting start-ups can spur competition in the internal market and foster the economic recovery.

For each individual measure described in the Temporary Framework, the advantages outweigh the disadvantages. However, due to the large amount of State aid measures allowed under the framework, combined with the extreme extent of the crisis, there is a risk of massive distortions of competition in the internal market. An indication of this is the huge volume of State aid already notified to the Commission and its uneven distribution across Member States. For instance, by May 2020, Germany had notified the Commission of around 50% of the total COVID-19 State aid.[28] At the same time Germany represents only 25% of EU GDP.

Such an uneven distribution may arise from the fact that Member States have different fiscal space. A Member State with greater fiscal space might decide – within the ceilings provided for by the Temporary Framework – to support its undertakings more generously than a Member State with smaller fiscal space. Member States with more fiscal space may decide to grant aid up to the maximum amount within the legal ceiling and even combine different measure, while Member States with less fiscal space cannot afford this.

Differences in fiscal space can stem from different debt-to-GDP-ratios before the outbreak of COVID-19, different GDP per capita or differences in the overall GDP. Member States with a lower debt-to-GDP ratio can more easily incur the additional debt needed to provide for such more generous aid. Member States with a lower GDP per capita have fewer resources to support national undertakings. For example, the cost of providing a grant of up to EUR 800,000 per undertaking is disproportionally lower for the Danish government than it is for the Bulgarian one. Finally, Member States with an overall lower GDP are also at a disadvantage. For example, the cost of recapitalising Lufthansa with nine billion Euros has a much smaller impact on Germany's debt-to-GDP-ratio than the cost of recapitalising Ryanair with a similar amount would have on Ireland's debt-to-GDP-ratio. These differences can exacerbate regional divergences in the EU.

For all these reasons, more competitive and innovative undertakings may lose market shares and even be pushed out of business solely because competitors in other Member States receive more generous aid. However, given the magnitude of the current crisis, it is still very likely that the benefits of State aid outweigh the costs of this distortion of competition.

4.2 Legal assessment

The Temporary Framework provides for greater clarity and legal certainty about the legality of State aid measures in times of Corona for everyone involved. It is easier for Member States to set up an aid scheme if they know the conditions under which the Commission will consider it compatible with the internal market. Likewise, the assessment is easier for the Commission if it can measure a State aid scheme against the more detailed Temporary Framework rather than merely the TFEU itself. Both factors contribute to a faster

[27] Most recent data are for 2017.

[28] Bloomberg on 18 May 2020, Germany's Virus Aid Is More Than Half Total for Entire EU.

procedure, which is particularly important during such a crisis. While guidelines and communications are only legally binding for the Member States if they have expressly agreed to them, they provide strong incentives for them to adjust their aid schemes accordingly because the Commission is highly unlikely to approve State aid that does not comply with their guidance.[29] More than that, the Commission obliges itself to apply the criteria set out in the Temporary Framework equally to all cases that come before it, provided that they are in accordance with primary law.[30]

The Temporary Framework complies with the requirements of the TFEU. Aid for COVID-19-relevant research and development (No. 6), aid to support testing and upscaling infrastructures (No. 7), and aid for the production of COVID-19 relevant products (No. 8) is based on Art. 107 (3) (c) TFEU that allows for aid "to facilitate the development of certain economic activities".[31] The requirements of this provision are complied with. Notably, the benefit to be gained through a COVID-19 vaccine, COVID-19 medication, better testing infrastructure, or an upscaled production of protective gear and ventilators clearly outweighs the negative effect on trade caused by such aid. Nothing in the Temporary Framework suggests that the Commission has misused its discretion.

All other aid measures are based on Art. 107 (3) (b) TFEU that allows for aid "to remedy a serious disturbance in the economy". Aid to undertakings that were not in difficulty on 31 December 2019 clearly complies with this provision. It can hardly be disputed that the economic downturn resulting from the COVID-19 outbreak constitutes a serious disturbance in the economy not only of one but of all Member States.[32] Likewise, the aid measures contained in the Temporary Framework undoubtedly have the aim of remedying this disturbance. Furthermore, nothing suggests that in the application of its discretion, the Commission has misbalanced the positive and negative effects of the aid measures.

As for aid to undertakings that were in difficulty on 31 December 2019, it could be argued that such aid can only be justified as aid to facilitate the development of certain economic activities [lit. c] rather than aid to remedy a serious disturbance in the economy [lit. b][33] because such aid addresses difficulties of an undertaking that were not caused by the serious disturbance. However, lit. c does not require that aid is only allocated to undertakings whose difficulties were caused by the serious disturbance. As long as the aid has the aim to remedy a serious disturbance in the economy of a Member State, the recipient may be an undertaking that was in difficulty even prior to the serious disturbance. The wording of the Treaty does not distinguish between undertakings in difficulty and undertakings not in difficulty.[34] That being said, distortions of competition must still be kept to a minimum. Therefore, it is to be welcomed that most measures are not available for medium or large undertakings that were in difficulty on 31 December 2019. For the reasons set out in Section 4.1, aid to micro and small undertakings is less likely per se to distort competition in the internal market. Therefore, it is appropriate that micro and small undertakings may receive a number of aid measures also in circumstances in which medium and large undertakings would not be eligible. Also, micro and small undertakings are excluded from receiving aid if they are subject to insolvency procedure under national law

29 Bartosch, A. (2020) EU-Beihilfenrecht, 3rd ed., Art. 107 Abs. 3 TFEU, para. 6.

30 CJEU, Case C-431/14 P (Greece/Commission), Judgment of 8 March 2016, ECLI:EU:C:2016:145, para. 70.

31 Temporary Framework para. 16bis.

32 Cf. Giesberts, L. / Gayger, M. / Weyand, P. (2020), COVID-19 – Hoheitliche Befugnisse, Rechte Betroffener und staatliche Hilfe, Neue Zeitschrift für Verwaltungsrecht, Vol. 39, pp. 417-423 (422).

33 See Segura Catalán, M. in: von der Groeben, H. / Schwarze, J. / Hatje, A. (eds.), Europäisches Unionsrecht, 7th ed. 2015, Art. 107 TFEU, para. 668.

34 Cf. Bartosch, A. (2020) EU-Beihilfenrecht, 3rd ed., Art. 107 Abs. 3 TFEU, para. 17r f, 23a, assessing the compatibility with the Treaty of tax and social security contributions and wage subsidies based on Art. 107 (3) (b) TFEU and only the compatibility of Aid for COVID-19 relevant research and development, aid to support testing and upscaling infrastructures, and aid for the production of COVID-19 relevant products on the basis of lit. c.

or have received rescue aid without repaying it or are subject to a restructuring plan after receiving restructuring aid.

Equally, those measures in the Temporary Framework that are open to undertakings regardless of their difficulties – i.e. aid provided through credit institutions and other intermediaries (No. 4), short-term export credit insurance (No. 5), deferrals of taxes or social security contributions (No. 9), and wage subsidies (No. 10) – are not likely to affect competition in the internal market to an extent that is contrary to the common interest either. Admittedly, banks and other financial institutions will receive some advantage from the fact that aid measures such as loans or guarantees are channelled through them. However, if financial institutions pass on the advantages of State aid to the final beneficiaries to the maximum extent possible – as the Temporary Framework requires[35] – the advantage for them will be rather small. Therefore, such aid can hardly be considered to go against the common interest. For financial institutions are indispensable for providing undertakings with the aid required. The extension of credit export insurance also complies with the Treaty. Based on a public consultation, the Commission has found that due to the COVID-19 pandemic, there is currently no market for export credit insurance for exports to any country.[36] If no such market exists, competition in the internal market cannot be distorted. Furthermore, deferrals of taxes and social security contributions are unlikely to have a significant distortive effect given that the obligations are merely postponed and not cancelled. Wage subsidies, in turn, are prone to have a stronger effect on competition than mere deferrals of payments since they strengthen undertakings with additional financial resources. Yet, in the context of the COVID-19 pandemic, the benefit of safeguarding employment outweighs the disadvantages of possible distortions of competition.

[35] Temporary Framework para. 31.
[36] Temporary Framework para. 32.

Annex

Tab. 2: List of measures included in the Temporary Framework

Measure	Main conditions to be compatible with the internal market:
Grants, tax advantages, repayable advances, loans, and equity.	• Aid is granted on the basis of a scheme with an estimated budget; • The overall aid does not exceed EUR 800 000 per undertaking; • Aid is only granted to undertakings that were not in difficulty on 31 December 2019, except for micro and small undertakings, provided they are not insolvent, have reimbursed any rescue aid, and are no longer subject to a restructuring plan if they received restructuring aid; • Aid is granted no later than 31 December 2020; Special rules apply to undertakings active in the sectors of agriculture, fishery and aquaculture.

Public **guarantees on** individual **loans** in response to the COVID-19 outbreak.	• The guarantee shall relate to loans for investment and/or working capital;
	• The guarantee is only granted to undertakings that were not in difficulty on 31 December 2019, except for micro and small undertakings, provided they are not insolvent, have reimbursed any rescue aid, and are no longer subject to a restructuring plan if they received restructuring aid;
	• The guarantee is granted no later than 31 December 2020;
	• The duration of the guarantee is limited to maximum 6 years, and the public guarantee may not exceed:
	  ○ 90% of the loan principal[37] where losses are borne under the 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 institutions.
	• Guarantee premiums are set at a minimum level of 50 basis points for the first year, 100 basis points for the second and third years, and 200 basis points for the fourth, fifth and sixth years (half of it each for SMEs);
	• For guarantees on loans with a maturity beyond 31 December 2020, the overall amount of loans per beneficiary shall not exceed:
	  ○ Double the annual wage bill of the beneficiary for 2019 or for the last year available, or
	  ○ 25% of the beneficiary's total turnover in 2019.
	  With appropriate justification, the amount of the loan might be increased to cover the liquidity needs of the undertaking from the moment of granting the loan for the coming 12 months (SMEs: 18 months);
	• For guarantees on loans with a maturity to 31 December 2020, the amount of the loan principal may be higher than for loans with longer maturity, provided that the proportionality of the aid remains assured.

Subsidised interest rates to public loans.	• The aid shall relate to loans for investment and/or working capital;
	• The loan is only granted to undertakings that were not in difficulty on 31 December 2019, except for micro and small undertakings, provided they are not insolvent, have reimbursed any rescue aid, and are no longer subject to a restructuring plan if they received restructuring aid;
	• The loan contracts are signed by 31 December 2020 at the latest, and are limited to a maximum six years;
	• The loans may be granted at reduced interest rates which are at least equal to the 1-year IBOR applicable on 1 January 2020 or at the moment of notification, plus defined credit risk margins amounting to 50 basis points for the first year, 100 basis points for the second and third years and 200 basis points for the fourth, fifth and sixth years (half for SMEs in each case);
	• For loans with a maturity beyond 31 December 2020, the overall amount of loans per beneficiary shall not exceed:
	  ○ Double the annual wage bill of the beneficiary for 2019 or for the last year available, or
	  ○ 25% of the beneficiary's total turnover in 2019.
	With appropriate justification, the amount of the loan might be increased to cover the liquidity needs of the undertaking from the moment of granting the loan for the coming 12 months (SMEs: 18 months);
	• For loans with a maturity to 31 December 2020, the amount of the loan principal may be higher than for loans with longer maturity, provided that the proportionality of the aid remains assured.

[37] The loan principal equals the amount of the loan to be repaid minus the interest.

Aid in the form of guarantees and loans pursuant to the conditions previously described can be **provided** to undertakings directly or **through credit institutions and other intermediaries**. As such aid does not have the objective of preserving or restoring the viability, liquidity or solvency of the credit institutions, it should not be assessed under the State aid rules applicable to the banking sector.	Safeguards should be put in place to limit undue distortions of competition. The credit institutions and other intermediaries should, to the largest extent possible, pass on the advantages of the public guarantee or subsidised interest rates on loans to the final beneficiaries.
Commercial and political risks associated with exports to a Member State, the UK, Australia, Canada, Iceland, Japan, New Zealand, Norway, Switzerland or the USA, as listed in the annex to the Communication on **short term export insurance**,[38] are non-marketable[39] until 31 December 2020 and therefore – unlike before – are not excluded from state-supported export credit insurance. Prior to COVID-19, risks related to exports to these countries were considered marketable and therefore excluded from state-supported export credit insurance.	
Aid for R&D projects carrying out COVID-19 and other antiviral relevant research.	• R&D aid and investment aid is only permissible, if it has an incentive effect, i.e. without State aid, the aided activity would not be carried out.[40] For projects started before 1 February 2020, the aid is deemed to have an incentive effect if it is necessary to accelerate or widen the scope of the project. Only costs related to the acceleration efforts or the widened scope are eligible for aid; • The aid may cover 100% of the eligible costs for basic research but shall not exceed 80% of eligible costs for industrial research; • Aid is only granted to undertakings that were not in difficulty on 31 December 2019, except for micro and small undertakings, provided they are not insolvent, have reimbursed any rescue aid, and are no longer subject to a restructuring plan if they received restructuring aid; • Aid is granted in the form of grants, tax advantages or repayable advances and no later than 31 December 2020; • Aid beneficiary shall commit to grant non-exclusive licenses under non-discriminatory market conditions to third parties in the European Economic Area.

[38] Annex to European Commission (2012), 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, OJ 2012/C 392/01.

[39] "Marketable risks" means commercial and political risks with a maximum risk period of less than two years, on public and non-public buyers in one of the aforementioned countries; all other risks are considered non-marketable.

[40] Bartosch, A. (2020) EU-Beihilfenrecht, 3rd ed., Art. 107 Abs. 3 TFEU, para. 176.

Investment aid for the construction or upgrade of **testing and upscaling infrastructure** required to develop, test and upscale COVID-19 relevant medical products.	• R&D aid and investment aid is only permissible, if it has an incentive effect, i.e. without State aid, the aided activity would not be carried out.[41] For projects started before 1 February 2020, the aid is deemed to have an incentive effect if it is necessary to accelerate or widen the scope of the project. Only costs related to the acceleration efforts or the widened scope are eligible for aid; • The aid shall not exceed 75% of eligible costs; • Aid is only granted to undertakings that were not in difficulty on 31 December 2019, except for micro and small undertakings, provided they are not insolvent, have reimbursed any rescue aid, and are no longer subject to a restructuring plan if they received restructuring aid; • Aid is granted in the form of grants, tax advantages or repayable advances and no later than 31 December 2020; • The investment project shall be completed within six months after the date of granting the aid; • A loss cover guarantee may be granted in addition to existing aid, or as an independent measure; • Access to the testing and upscaling infrastructure shall be granted on a transparent and non-discriminatory basis.
Investment aid for the production of COVID-19 relevant products.	• R&D aid and investment aid is only permissible, if it has an incentive effect, i.e. without State aid, the aided activity would not be carried out.[42] For projects started before 1 February 2020, the aid is deemed to have an incentive effect if it is necessary to accelerate or widen the scope of the project. Only costs related to the acceleration efforts or the widened scope are eligible for aid; • The aid shall not exceed 80% of eligible costs; • Aid is only granted to undertakings that were not in difficulty on 31 December 2019, except for micro and small undertakings, provided they are not insolvent, have reimbursed any rescue aid, and are no longer subject to a restructuring plan if they received restructuring aid; • Aid is granted in the form of grants, tax advantages or repayable advances and no later than 31 December 2020; • The investment project shall be completed within six months after the date of granting the aid; • A loss cover guarantee may be granted in addition to existing aid, or as an independent measure.
Temporary **deferrals of taxes or of social security contributions** which apply to undertakings that are particularly affected by the COVID-19 outbreak.	• The deferral is granted no later than 31 December 2020; • The end date of the deferral shall not be later than 31 December 2022.
Wage subsidies.	• The wage subsidy is aimed at avoiding lay-offs during the COVID-19 outbreak (and to ensure the continuation of business activities of self-employed individuals); • The wage subsidy is granted in the form of schemes to undertakings in specific sectors or regions, or those of a certain size, particularly affected by the COVID-19 outbreak; • The wage subsidy is granted over a period of not more than 12 months; the benefitting personnel is maintained in continuous employment, and the business activity of self-employed individuals is maintained, for the entire period for which the wage subsidy is granted; • The monthly wage subsidy shall not exceed: o 80% of the monthly gross salary of the benefitting personnel, or o 80% of the average monthly wage equivalent income of the self-employed individual. • The wage subsidy may be combined with other generally available or selective employment support measures, in addition to measures such as tax deferrals or deferrals of social security payments.
Recapitalisation measures in the form of equity and/or hybrid capital instruments to undertakings facing financial difficulties due to the COVID-19 outbreak.	• Without the aid, the beneficiary would go out of business or would face serious difficulties in maintaining its operations; • Aid is only granted to undertakings that were not in difficulty on 31 December 2019, except for micro and small undertakings, provided they are not insolvent, have reimbursed any rescue aid, and are no longer subject to a restructuring plan if they received restructuring aid; • Aid is granted no later than 30 June 2021; • Intervention is in the common interest, e.g. because the undertaking in question is systemically important or to avoid market failure and social hardship or significant loss of employment; • The beneficiary cannot find financing on the markets at affordable terms and the horizontal measures – i.e. measures of sectoral or even general application – existing in the Member State concerned are insufficient to ensure its viability;

[41] Bartosch, A. (2020) EU-Beihilfenrecht, 3rd ed., Art. 107 Abs. 3 TFEU, para. 176.
[42] Bartosch, A. (2020) EU-Beihilfenrecht, 3rd ed., Art. 107 Abs. 3 TFEU, para. 176.

	• Recapitalisation must not exceed the minimum needed to ensure the viability of the beneficiary and should not go beyond restoring the capital structure of the beneficiary on 31 December 2019; • The State shall receive appropriate remuneration for the investment; • "Step-up mechanisms[43]" or other equivalent measures shall increase the remuneration of the State over time in order to incentivise the beneficiary to buy back the State capital injections; • Beneficiaries must not engage in aggressive commercial expansion financed by State aid; • If the recapitalisation measure exceeds EUR 250 million and its beneficiary has significant market power on at least one of the markets in which it operates, Member States must propose additional measures to preserve effective competition in those markets; • Beneficiaries that have received a recapitalisation of more than 25% of equity must demonstrate a credible exit strategy for the participation of the Member State.

[43] The remuneration of the State increases by a minimum of 10% if four years after the COVID-19 equity injection, the State has not sold at least 40% of its equity participation. If the State has not sold its equity participation in full after six years, remuneration increases again by 10%.

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