

March, 27<sup>th</sup> 2020

## # EUROPEAN UNION – Measures taken by the European Commission and regarding State Aid

### 1. EU STATE AID AND COVID-19 OUTBREAK: A SWIFT AND MASSIVE RESPONSE

Faster than during the 2008-2009 crisis, and almost as quick as the spreading of the Covid-19 virus ... that's how the EU's response to the current pandemic crisis can be characterized. In exceptional circumstances such as the 2008-2009 financial crisis or during the 2010 Icelandic ash aviation lockdown, EU State aid law allows for flexible derogations to its standard approach to State aid control.

Indeed, as soon as on March 13<sup>th</sup> and 19<sup>th</sup>, the EU Commission (the "Commission") has adopted a series of measures implementing this flexible approach for approving urgent aid granted by Member States to companies affected by the COVID-19 outbreak.

This flexibility illustrates how deeply the Commission's perception of State has evolved between the pre-2008 crisis and today. Back in the early 2000s, State aids were largely perceived negatively. Following the 2008 crisis, the Commission's philosophy has gradually shifted towards a more positive approach –subject to conditions–, in a process that culminated during the 2012-2014 reform.

We briefly discuss below the measures adopted last week by the Commission.

#### THE EU EXISTING LEGAL TOOLBOX

- **Natural Disasters or Exceptional Occurrences: Automatic Approval**

Pursuant to Art. 107.2 (b) TFUE, State aid measures are automatically exempted, i.e. without discretionary compatibility assessment by the Commission, in order "*to make good the damage caused by natural disasters or exceptional occurrences*". This provision applies provided that there is an "exceptional occurrence" causing economic damages. The Commission has already clarified that the COVID-19 outbreak constitutes an "exceptional occurrence".

- **Serious Disturbance in the Economy of a Member State: Compatibility Assessment**

Pursuant to Art. 107.3 (b) TFEU, State aid measures may be exempted under a discretionary compatibility assessment by the Commission, when they aim at remedying "*a serious disturbance in the economy of a Member State*". This legal basis had only been used on a handful of cases between 1958 and 2008, then over 400 times during the financial crisis.

La Newsletter a pour but de donner un aperçu des développements juridiques récents. Son contenu n'exprime pas un avis juridique et ne saurait se substituer à une consultation juridique.

[www.dsavocats.com](http://www.dsavocats.com)



- **Rescue and Restructuring Aid**

Pursuant to Art. 107.3 c) TFEU, EU State aid law also allows for “traditional” rescue and restructuring aid to save companies in difficulty, under very strict conditions. Here too, the EU’s response during the financial crisis illustrates how the Commission was able to quickly adapt its practice: specific guidelines were adopted by the Commission in 2009, which later influenced the 2014 guidelines for this type of exemption. While the Commission has not yet adopted specific Covid-19 guidelines on rescue and restructuring, it may do so in the (near?) ” future.

## **THE NEW TEMPORARY FRAMEWORK (MARCH 19TH, 2020)**

On March 13<sup>th</sup> 2020, the Commission adopted a [coordinated response](#) to counter the economic impact of the COVID-19 crisis and, on March 19<sup>th</sup> 2020, it adopted a new State aid [Temporary Framework](#) valid until the end of 2020.

This Framework describes the measures that the Member States can adopt in compliance with EU State aid rules. These measures primarily aim at helping companies to cope with insufficient short term liquidity. The Framework aims at complementing the existing tools, and do not replace them.

- **Measures that do NOT constitute State aid (no need for the Commission’s green light):**

- a) Measures available to all companies (no selectivity):*

Wage subsidies, suspension of payments of corporate and value added taxes or social contributions, and support directly to consumers, for example, for cancelled services or tickets that are not reimbursed by the operators concerned (§ 12).

- b) Measures available to specific companies:*

Measures to compensate specific companies for the damage directly caused by “exceptional occurrences”, for instance in sectors such as aviation and tourism, hospitality and retail. The principle of “one time, last time” would not apply in this context.

The Commission will require a number of information and data from the Member States, in order to track these exempted measures:

- date of first case reported in the country and number of affected persons at the



time of notification;

- economic impact of the COVID-19 outbreak in the Member State;
- sequence of events between the occurrence of the COVID-19 outbreak and the adoption of the State aid scheme including any official recommendations or prohibitions;
- detailed required information that were published for certain sectors, such as the aviation sector (identification of the additional costs, of the foregone revenues -loss of traffic, reduced demand-, variable costs, catering not incurred, reference period, reconstitution of damages caused by comparison of the situation during the period of spread of the COVID-19 and the reference period);

▪ **Rescue and restructuring aid:**

Measures granted to individual companies facing acute liquidity needs, and support to undertakings facing financial difficulties, due to or aggravated by the COVID-19 outbreak.

▪ **Beyond Direct Grants: Other Types of Measures**

The Framework clarifies other types of measures which Member States can adopt to support enterprises affected by the COVID-19 outbreak.

The measures eligible to the Framework apply only to companies which entered into difficulty after 31 December 2019 and subject to prior notification to, and approval by, the Commission:

- **direct grants, repayable advances or tax advantages** (small size aid measures up to €800,000) to address urgent liquidity needs;
- **guarantees on loans** – measures more destined to large enterprises: (i) guarantee premiums set at a minimum level depending the recipient credit risk margin or (ii) aid schemes on the basis of this credit risk margin basis, but whereby maturity, pricing and guarantee coverage can be modulated (e.g. lower guarantee coverage offsetting a longer maturity); this type of aid will ensure banks keep providing loans to the business customers who need them to cover immediate working capital and investment needs;
- **subsidised interest rates for loans:** (i) loans granted at reduced interest rates (at least 1 year IBOR or equivalent plus the credit risk margins depending on recipient's credit risk margin), or (ii) aid schemes, on the basis of the credit risk margin, but whereby maturity, pricing and guarantee coverage can be modulated (e.g. lower guarantee coverage offsetting a longer maturity); these loans can help businesses



cover immediate working capital and investment needs;

- **aid in the form of guarantees and loans channeled through credit institutions or other financial institutions:** measures building on banks' existing lending capacities, and using them as a channel for support to businesses/small and medium-sized companies; this type of aid is considered as direct aid to the banks' customers, not to the banks themselves;
- **short-term export credit insurance:** additional flexibility on how to demonstrate that certain countries are not-marketable risks.

■ **Procedure and Timing**

As of today (March 24th) the Commission has already adopted several decisions:

- on 12 March 2020, a €12 m Danish scheme to compensate damages caused by cancellations of large public events due to COVID-19 outbreak;
- on 21 March 2020, a Danish €130 million aid scheme to support small businesses and three French aid schemes State guarantees on commercial loans and credit lines to companies that have up to 5,000 employees and State guarantees to banks on portfolios of new loans for all types of companies up to €300 bn of liquidity support);
- on 22 March 2020, an Italian €50 m aid scheme for the production and supply of medical equipment and masks; four Portuguese €3 bn schemes for small and medium-sized enterprises and midcaps; two German subsidised loan programmes (one covering up to 90% of the risk for loans for mid-sized and larger companies with a maturity of up to 5 years and to €1 billion per company, depending on the company's liquidity needs, and one in which the German federal promotional bank participates together with private banks to provide larger loans – risk cover taken by the State up to 80% of a specific loan but not more than 50% of total debt of a company).

DG COMP has set up a dedicated mailbox and telephone number to assist Member States with any queries on COVID-19 State aid measures: +32.2.296.52 00 - [COMP-COVID@ec.europa.eu](mailto:COMP-COVID@ec.europa.eu).



## 2. EUROPEAN UNION: TEMPORARY RESTRICTION ON NON-ESSENTIAL TRAVEL TO THE EU (17.03.2020)

EU Leaders agreed to temporary restriction of non-essential travel from third countries into the EU area for 30 days. Any possible prolongation of this period should be assessed depending on further developments. The temporary travel restriction foresees exemptions for nationals of all EU Member States and Schengen Associated States (Iceland, Liechtenstein, Norway and Switzerland; whilst UK nationals are still to be treated in the same way as EU citizens until end 2020), for the purposes of returning to their homes. Exceptions are also foreseen for travellers with an essential function or need.

Start date: 17.03.2020

End date: 30 days from starting date

info: <https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-respons...>

## 3. EUROPEAN UNION: EASA ISSUES SAFETY DIRECTIVE (16.03.2020)

The safety directive of the European Union Aviation Safety Agency (EASA) specifies measures to be taken by national authorities for flights serving high-risk destinations. It recommends thorough disinfecting and cleaning of aircraft which operate from high-risk destinations after each flight. The definition of high risk geographical areas is based on World Health Organisation (WHO) situation report assessments and guidance issued by the European Centre for Disease Prevention and Control (ECDC), combined with regional public health assessments. EASA further recommended that airlines operating on all routes step up the frequency of cleaning, disinfect as a preventative measure and ensure full disinfection of any aircraft which has carried a passenger who was suspected or confirmed as being infected with COVID-19. Airport operators should similarly disinfect terminals regularly.

Start date: 16.03.2020

End date: not available

Further information: <https://www.easa.europa.eu/coronavirus-covid-19>

Further information: [https://eeas.europa.eu/headquarters/headquarters-homepage\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage_en)

## 4. COMMISSION PRESENTS PRACTICAL GUIDANCE TO ENSURE CONTINUOUS FLOW OF GOODS ACROSS EU VIA GREEN LANES (23/03)



The Commission issued new practical advice on how to implement its Guidelines for border management, in order to keep freight moving across the EU during the current pandemic. To ensure that EU-wide supply chains continue to operate, Member States are requested to designate, without delay, all the relevant internal border-crossing points on the trans-European transport network (TEN-T) as **'green lane' border crossings**. The green lane border crossings should be open to all freight vehicles, whatever goods they are carrying. Crossing the border, including any checks and health screening, should not take more than 15 minutes.

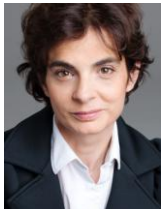
A collective and coordinated approach to cross-border transport is more important today than ever before. The green lanes are also specifically designed to protect transport workers at the frontline of this crisis. This set of recommendations will ease their already stressful mission and it will bring more safety and predictability to their work.” Green lane border crossings Procedures at green lane border crossings should be minimised and streamlined to what is strictly necessary. Checks and screening should be carried out without drivers having to leave their vehicles, and drivers themselves should undergo only minimal checks. Drivers of freight vehicles should not be asked to produce any document other than their identification and driving license and if necessary a letter from the employer. The electronic submission/display of documents should be accepted. No freight vehicle or driver should face discrimination, irrespective of origin and destination, the driver's nationality or the vehicle's country of registration. In light of the current situation, Member States are also urged to temporarily suspend all road access restrictions currently in place in their territory, such as weekend, night and sectoral bans. The Commission encourages Member States to set up safe passage transit corridors to allow private drivers and their passengers, such as health and transport workers, as well as EU citizens being repatriated, regardless of their nationality, to directly pass with priority through the country in each necessary direction along the TEN-T Network. This should be done while staying strictly on the designated route and to take the necessary minimum rest breaks. Member States should ensure that they have at least one airport functional for repatriation and international relief flights. Enhanced cooperation among EU Member States and beyond Following the video-conference between EU Transport Ministers on 18 March, the Commission set up a network of national contact points and a platform to provide information on national transport measures taken by Member States in response to the coronavirus. The national contact points should support the effective functioning of the green lane border crossing points. Neighbouring non-EU countries are invited to work closely with this network to ensure the flow of goods in all directions. Application of rules for transport workers To keep transport moving, the Commission recommends that Member States take action to ensure the free movement of all workers involved in international transport, whatever the transport mode. In particular, rules such as travel restrictions, and mandatory quarantine of transport workers not displaying symptoms, should be waived. For example, Member States should not



require that transport workers carry a doctor's certificate to prove their good health. To ensure the safety of transport workers, enhanced hygiene and operational measures are also needed in airports, ports, railway stations and other land transport hubs. Today's note from the Commission includes a full list of recommendations to protect drivers from the coronavirus (Annex 2). Internationally recognised certificates of professional competence should be considered sufficient to prove that a worker is active in international transport. In the absence of such certificates (not all international drivers have one), a letter signed by the employer (Annex 3) should be accepted. All of these principles should also apply to third country nationals if they are essential to ensuring that cargo moves freely within and into the EU.

**Background** The coronavirus pandemic is having a major disruptive impact on European transport and mobility. The European supply chain is maintained through an extensive network of freight transport services, including all modes of transport. Continued and uninterrupted land, waterborne and air cargo services are of crucial importance for the functioning of the EU's internal market and its effective response to the current public health crisis.

For further information, please contact:



**Marie-Christine Bonnamour**  
Partner  
mc.bonnamour@squaris.com



**Liza Dignac**  
Senior Public Relations Consultant  
l.dignac@squaris.com



**Michel Debroux**  
Partner  
debroux@dsavocats.com