European Commission - Press release

State aid: Commission expands Temporary Framework to recapitalisation and subordinated debt measures to further support the economy in the context of the coronavirus outbreak *

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*** updated on 8/05/2020, 20h25 with a new paragraph**

The European Commission has adopted a second amendment to extend the scope of the State aid Temporary Framework adopted on 19 March 2020 to enable Member States to support the economy in the context of the coronavirus outbreak. This follows a first amendment adopted on 3 April 2020.

Based on these horizontal rules and in close cooperation with Member States, the Commission has to-date approved an estimated €1.9 trillion in State aid to the EU economy – to provide urgently needed liquidity for companies, save jobs, enable research and development and ensure the supply of products to fight the coronavirus outbreak. This second amendment complements the types of measures already covered by the Temporary Framework and existing State aid rules, by setting out criteria based on which Member States can provide recapitalisations and subordinated debt to companies in need, whilst protecting the level playing field in the EU.

Executive Vice-President Margrethe **Vestager**, in charge of competition policy, said: *"We continue to work closely with Member States to ensure that European businesses have access to urgently needed liquidity. Our rules now also enable such support through subordinated debt. As the crisis evolves, many businesses will also need capital to stay afloat. If Member States decide to step in, we will apply today's rules to ensure that taxpayers are sufficiently remunerated and their support comes with strings attached, including a ban on dividends, bonus payments as well as further measures to limit distortions of competition. And for public transparency, large companies also have to report on the use of aid received and compliance with their responsibilities linked to the green and digital transitions. Because we have to uphold European values and the need for a level playing field to be able to bounce back strongly from this crisis.*

That's also why much more is needed than State aid control. We need a European recovery plan that is green and digital and to the benefit of all European consumers. That's in the interest of all of Europe – to make sure that this global symmetric crisis does not transform into an asymmetric shock to the detriment of Member States with less possibility to help their industry and the EU's competitiveness as a whole."

Recapitalisation aid to companies

The emergency measures, which Member States have had to take to manage the coronavirus outbreak, have affected the ability of many European companies to produce goods or supply services, resulting in losses that have decreased their equity and reduced their ability to borrow on the markets. This second amendment therefore expands the Temporary Framework to enable well-targeted public interventions in the form of recapitalisation aid to those non-financial companies in need, to help reduce the risk to the EU economy as a whole.

At the same time, the Temporary Framework sets a number of safeguards to avoid undue distortions of competition in the Single Market. Furthermore, Member States are free to design national measures in line with additional policy objectives, such as further enabling the green and digital transformation of their economies or preventing fraud, tax evasion or aggressive tax avoidance.

(i) **Conditions on the necessity, appropriateness and size of intervention:** Recapitalisation aid should only be granted if no other appropriate solution is available. It must also be in the common interest to intervene, for example to avoid social hardship and market failure due to significant loss of employment, the exit of an innovative or a systemically important company, or the risk of disruption to an important service. Finally, the aid must be limited to enabling the viability of the company and should not go beyond restoring the beneficiary's capital structure to before the coronavirus outbreak.

(ii) **Conditions on the State's entry in the capital of companies and remuneration**: The State must be sufficiently remunerated for the risks it assumes through the recapitalisation aid. Moreover, the remuneration mechanism needs to incentivise beneficiaries and/or their owners to buy out the shares acquired by the State using State aid to ensure the temporary nature of the State's intervention.

(iii) **Conditions regarding the exit of the State from the capital of the companies concerned**: Beneficiaries and Member States are required to develop an exit strategy, in particular as regards large companies that have received significant recapitalisation aid from the State. If six years after recapitalisation aid to publicly listed companies, or up to seven years for other companies, the exit of the State is in doubt, a restructuring plan for the beneficiary will have to be notified to the Commission.

(iv) **Conditions regarding governance**: Until the State has exited in full, beneficiaries are subject to bans on dividends and share buybacks. Moreover, until at least 75% of the recapitalisation is redeemed a strict limitation of the remuneration of their management, including a ban on bonus payments, is applied. These conditions also aim at incentivising the beneficiaries and their owners to buy out the shares owned by the State as soon as the economic situation allows.

(v) **Prohibition of cross-subsidisation and acquisition ban**: To ensure that beneficiaries do not unduly benefit from the recapitalisation aid by the State to the detriment of fair competition in the Single Market, they cannot use the aid to support economic activities of integrated companies that were in economic difficulties prior to 31 December 2019. Moreover, until at least 75% of the recapitalisation is redeemed, beneficiaries, other than small and medium-sized enterprises (SMEs), are in principle prevented from acquiring a stake of more than 10% in competitors or other operators in the same line of business, including upstream and downstream operations.

***** Under this amendment, Member States can notify recapitalisation schemes or individual aid measures. When approving a scheme, the Commission will request the separate notification of aid to a company above the threshold of €250 million for individual assessment. Companies that were already in difficulty on 31 December 2019 are not eligible for aid under the Temporary Framework.

Public transparency and reporting: If recapitalisation aid is granted to beneficiaries as part of schemes, Member States have to publish details on the identity of the companies that have received aid and the amount within three months of the recapitalisation. Furthermore, beneficiaries, other than SMEs, have to publish information on the use of the aid received, including on how the use of the aid received supports the company's activities in line with EU and national obligations linked to the green and digital transformation.

The Commission recognises that in the upcoming recovery phase, companies will likely require additional large-scale private and public investments to meet the challenges and seize the opportunities of the green and digital twin transitions. In this context, the Commission notes that this amendment to the Temporary Framework complements rather than replaces existing possibilities under EU State aid rules for Member States to provide support. Furthermore, as already announced in the Commission's Communication of 14 January 2020, relevant State aid rules, in particular the Environmental and Energy State aid guidelines, will be revised by 2021 in light of the policy objectives of the European Green Deal and support a cost-effective and socially-inclusive transition to climate neutrality by 2050. This will contribute to a recovery strategy for the European economy that meets the important green and digital twin transitions in line with EU and national objectives.

Aid to companies in the form of subordinated debt

Today's amendment to the Temporary Framework also introduces the possibility for Member States to support undertakings facing financial difficulties due to the coronavirus outbreak by providing subordinated debt to companies at favourable terms. This concerns debt instruments that are subordinated to ordinary senior creditors in case of insolvency proceedings, and complements the toolbox available to Member States under the existing Temporary Framework including to grant debt with senior ranking to companies in need.

Subordinated debt cannot be converted into equity whilst the company is a going concern and the State assumes less risk. However, since such debt increases the ability of companies to take on senior debt in a manner similar to capital support, aid in the form of subordinated debt includes higher remuneration and a further limitation as to the amount compared to senior debt under the Temporary Framework. If Member States want to provide subordinated debt in amounts exceeding the thresholds, all conditions for recapitalisation measures set out above will apply.

Next steps

The amended Temporary Framework will be in place until the end of December 2020. As solvency issues may materialise only at a later stage as this crisis evolves, for recapitalisation measures only the Commission has extended this period until the end of June 2021. With a view to ensuring legal certainty, the Commission will assess before these dates if they need to be extended.

Finally, the Commission keeps under constant review the need for further measures enabling for

Member States to support their economy in these difficult times and help companies bounce back strongly after the crisis, including by further amending the Temporary Framework. In this context, the Commission is also analysing existing State rules, to verify consistency with the principles endorsed in the Temporary Framework for State aid measures to support the economy in the current coronavirus outbreak.

Background

On 19 March 2020, the Commission adopted a new State aid Temporary Framework to support the economy in the context of the coronavirus outbreak, based on Article 107(3)(b) of the Treaty on the Functioning of the European Union. The Temporary Framework was first amended on 3 April 2020. The Temporary Framework recognises that the entire EU economy is experiencing a serious disturbance. It enables Member States to use the full flexibility foreseen under State aid rules to support the economy, while limiting negative consequences to the level playing field in the Single Market.

The Temporary Framework helps target support to the economy, while limiting negative consequences to the level playing field in the Single Market. The amendment of the scope of the Temporary Framework to aid in the form of recapitalisations complements the possibility for Member States to purchase existing shares of companies at market price or *pari passu* with private shareholders, which in principle falls outside the scope of EU State aid control. This can be of particular importance in case of risk of hostile takeovers of strategic companies by foreign purchasers. This complements the tools available to Member States as set out in the Commission's guidelines to ensure a strong EU-wide approach to foreign investment screening in a time of public health crisis and related economic vulnerability.

On 13 March 2020, the Commission adopted a Communication on a Coordinated economic response to the COVID-19 outbreak setting out these possibilities. For example, Member States can make generally applicable changes in favour of businesses (e.g. deferring taxes, or subsidising short-time work across all sectors), which fall outside State Aid rules. They can also grant compensation to companies for damage suffered due to and directly caused by the coronavirus outbreak. This can be useful to support particularly impacted sectors, such as transport, tourism, hospitality and retail.

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