

# COVID-19: THE EUROPEAN COMMISSION SETS OUT STATE AID STRATEGY – OPPORTUNITIES AND CHALLENGES FOR EU BUSINESSES

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## **Antitrust, Policy and Regulatory Alert**

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The COVID-19 outbreak is affecting businesses in the European Union ("EU") in many different ways. Recognizing the scale of the impact, the Commission Executive Vice-President Margrethe Vestager, in charge of competition, stated on 13 March that "governments may need to give State aid on a much larger scale. And our rules allow for wide-ranging support, throughout the economy, in Member States that are facing a serious disturbance to their economies."

On 19 March, the Commission published a new Temporary Framework to tackle the issues that are being raised by the COVID-19 outbreak. This Framework will allow Member States to intervene in affected markets by providing monetary support to companies and groups of companies. It is worth noting that this Framework will also apply in the United Kingdom during the Transition Period (i.e., until 31 December 2020).

## **TEMPORARY FRAMEWORK TO TACKLE THE COVID-19 OUTBREAK**

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

Under this new Temporary Framework, Member States will be able to:

- Set up schemes for direct grants (or tax advantages) of up to EUR 800,000 per company;
- Give subsidized State guarantees on bank loans; and
- Enable public and private loans with subsidized interest rates.

The new Temporary Framework also recognizes the important role of the banking sector to deal with the economic effects of the COVID-19 outbreak in the channeling of the aids to final customers, in particular SMEs.

With the Temporary Framework, the Commission mainly focuses on sectors that are highly impacted by the outbreak such as health, tourism, culture, retail and transport. Importantly, these are sectors that would otherwise be more likely to attract scrutiny by the Commission because they are less likely to fall under the current legal instruments that avoid the State aid notification requirement. The Framework also recognizes that all sectors are increasingly going to be affected by the outbreak.

The Temporary Framework is immediately applicable. However, to fall within the scope of the Framework, the aid concerned must be granted by 31 December 2020 at the latest.

## SUPPORT BASED ON THE CURRENT STATE AID LEGAL FRAMEWORK

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

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

In addition, the Commission has highlighted that Member States can apply Article 107(2)(b) of the TFEU, which enables them to directly compensate companies facing economic damages caused by natural disasters or exceptional occurrences. Member States wishing to support SMEs have been encouraged to do so by creating a dedicated State aid scheme, which will require a single notification to the Commission. Individualized support to large companies could be envisaged as well. However, Member States will have to submit individual notifications to obtain the Commission's approval.

The priority given by the Commission to State aid measures in relation to the COVID-19 outbreak has been exemplified by the unprecedented approval of the Danish aid scheme within 24 hours of receiving the notification from Denmark. This scheme is aimed at compensating organizers of large events for the damages suffered due to the cancellation of events of more than 1,000 attendees due to the COVID-19 outbreak.

## HOW K&L GATES CAN HELP YOU

Our lawyers throughout the EU have a deep understanding of the challenges businesses are facing and can design highly tailored, creative and pragmatic solutions to help our clients benefit from the multiple support measures available (or soon to be available) across Europe. In this context, we can assess whether your business falls within the scope of any aid schemes implemented by Member States and assess your eligibility, including those of your affiliates in other jurisdictions. We can then help you design a strategy to engage with relevant Member States and assist you during the notification process to the Commission.

In particular, our integrated EU- based team is available and ready to:

- Assess the eligibility of your business under an existing or proposed State aid regime.
- Engage and facilitate your communication with the services of the authorities of the relevant Member States (at the national level and in Brussels with the Permanent Representation to the EU) and with the Commission, once a project has been notified.
- Ensure that the interests of your business are duly taken into account and protected throughout the whole process (including before the Member States' authorities and the Commission).
- Assist you in providing support to the relevant Member States in designing State aid schemes or individual State aid measures. In particular, by advocating for your sector to be included in a relevant scheme or measure.

- Assist you with the relevant actions should your company and/or sector be deemed out of the scope of a planned State aid scheme. This includes making sure that your competitors are not unduly favored and that your procedural rights are protected throughout the process.

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