



# YOUNG EUROPEAN LAWYERS CONTEST – FINAL 2023 –

**6-8 November 2023**

- ERA Conference Centre, Trier: 6 -7 November 2023
- General Court of the EU, Luxembourg: 8 November 2023

EXCELLENCE IN  
**EUROPEAN LAW**<sup>1</sup>

## Jurors

**Vasilis Christianos**, Emeritus Professor of EU law – Athens Law School; Founder and Partner Christianos & Partners, Lawyer, Bar of Luxembourg; Supreme Court Lawyer, Athens Bar Association

**Vanessa Knapp**, Retired Partner, Freshfields Bruckhaus Deringer, Executive Board Friends of ERA, Visiting Professor, Queen Mary University of London

**Rimvydas Norkus**, Judge, General Court of the European Union, Luxembourg

**Pierre-Dominique Schupp**, First Vice President of the CCBE, Brussels; Lawyer, Rusconi & Associés, Lausanne

**Petra Škvařilová-Pelzl**, Judge, General Court of the European Union, Luxembourg

**William Valasidis**, Judge, General Court of the European Union, Luxembourg

## Trainer

**George Gryllos**, Legal Secretary, Court of Justice of the European Union, Luxembourg

## Friends of ERA

**Wolfgang Heusel**, Former Director, Academy of European Law, Executive Board Friends of ERA, Trier

## Aim of the contest

The contest will bring together young and newly qualified lawyers to spotlight the importance of European law for their future legal practice

Event number:  
223DT41

Organiser:  
Florence Hartmann-Vareilles, ERA

Venue address:  
Metzer Allee 4  
54295 Trier  
Germany



# Final of the Young European Lawyers Contest 2023

## Monday, 6 November 2023

- 13:15 Welcome coffee and registration of participants
- 13:45 **Opening and introduction to the rules of the contest**  
*Florence Hartmann-Vareilles, Head of Business Law Section, ERA*

### I. GETTING TO KNOW EACH OTHER

- 14:00 **Introducing yourself/game/quiz**  
**TEAM 1**  
**TEAM 2**  
**TEAM 4**  
**TEAM 5**  
**TEAM 6**  
**TEAM 8**

### II. EU LITIGATION CRASH COURSE (HYBRID)

*George Gryllos*

- 14:20 **Direct actions before the General Court**
- How to prepare an action and submit procedural documents
  - Admissibility issues
  - How to prepare for the oral phase
- 15:10 Coffee break
- 15:30 Workshop on litigation before the General Court
- 16:30 Result of the workshop

### III. PREPARING THE NEGOTIATION EXERCISE

- 16:45 **Introduction to the negotiation exercise and the Moot Court**  
*Vanessa Knapp, Florence Hartmann-Vareilles*
- 17:00 **Preparation of the negotiation exercise** (rooms tbc)
- TEAM 1 (company A)**  
**TEAM 2 (Company B)**  
**TEAM 4 (Company A)**  
**TEAM 5 (Company B)**  
**TEAM 6 (Company A)**  
**TEAM 8 (Company B)**
- 18:30 End of the first day
- 19:45 Dinner

## Tuesday, 7 November 2023

*Jury: Vanessa Knapp, Pierre-Dominique Schupp,*

### IV. NEGOTIATION EXERCISE AND PREPARING THE MOOT COURT: TWO PARALLEL SESSIONS

- 08:45 **Plenary meeting:** Introduction to the Young European lawyers Academy  
*Mareike Hoffmann, Course Director, European Public Law, ERA*
- 09:00 **Negotiation exercise**  
**TEAM 1 (Company A)** and **TEAM 2 (Company B)**
- Preparation for the Moot Court**
- |               |      |
|---------------|------|
| <b>TEAM 4</b> | Room |
| <b>TEAM 5</b> | Room |
| <b>TEAM 6</b> | Room |
| <b>TEAM 8</b> | Room |

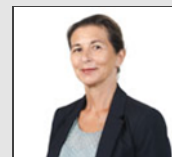
## Participation

The contest is open to trainee lawyers and newly qualified lawyers (in their first year after qualification) from the EU Member States.

## Language

Participants should have a working knowledge of English.

## Your contact persons



Florence Hartmann-Vareilles  
Lawyer  
E-Mail: FHartmann@era.int



Nathalie Dessert  
Assistant  
E-Mail: ndessert@era.int  
Tel.: +49 (0)651 9 37 37-220

## Background and Rules

- The final of the contest follows three semi-finals that took place in Brussels, Vilnius and Paris in May and June 2023.
- The best two teams from each semi-final of the contest take part in a three-day final held at ERA's premises in Trier and at the General Court of the European Union in Luxembourg on 6-8 November 2023.
- Teams who were not selected in the semi-finals will be able to participate online in the training on "How to litigate before the Court of Justice" on 6 November 2023.
- The finalists in Trier will perform the negotiation exercise and prepare for the Moot court in parallel
- The two winning teams of the negotiation exercise will contest the Moot court in front of a jury composed of high-profile representatives from legal practice and judges from the CJEU
- The other finalists will be invited to observe the Moot court in Luxembourg

## For further information

[www.younglawyerscontest.eu](http://www.younglawyerscontest.eu)

- 10:30 Coffee break
- 11:00 **Negotiation exercise**  
**TEAM 4 (Company A)** and **TEAM 5 (Company B)**
- Preparation for the Moot**  
**TEAM 1**  
**TEAM 2**  
**TEAM 6 (cont.)**  
**TEAM 8 (cont.)**
- 12:30 Lunch
- 14:00 **Negotiation exercise**  
**TEAM 6 (Company A)** and **TEAM 8 (Company B)**
- Preparation for the Moot**  
**TEAM 1 (cont)**  
**TEAM 2 (cont.)**  
**TEAM 4 (cont.)**  
**TEAM 5 (cont.)**
- 15:30 **Jury deliberation**
- 15:45 Coffee break
- 16:15 **Teams debriefing with the jury:** what went well and wrong, tips and tricks
- 16:30 **Announcement of the two winning teams invited to perform at the Moot Court**
- 16:45 **Final preparation of the Moot Court by the two winning teams**
- 18:30 End of the second day
- 18:45 Guided walking tour
- 20:00 Dinner

## Wednesday, 8 November 2023

*Jury: Rimvydas Norkus, Petra Škvařilová-Pelzl, William Valasidis, Vanessa Knapp, Pierre-Dominique Schupp*  
*Friends of ERA : Wolfgang Heusel*

---

### V. MOOT COURT AT THE GENERAL COURT OF THE EUROPEAN UNION

---

- 07:30 **Departure by bus** from ERA to Luxembourg
- 08:30 **Arrival and registration** at the General Court
- 09:00 **Moot Court**
- 10:30 **Jury Deliberation**
- 11:00 **Award Ceremony**
- 11:15 **Visit of the CJEU**
- 12:15 **Return to ERA** via Luxembourg Airport
- 13:30 **Light lunch** and end of the Young European Lawyers Contest
- 

### Award to candidates

All candidates having participated in the Young European Lawyers Contest will be granted a certificate of attendance mentioning the number of training hours.





They will also benefit from a one-year free membership of the Friends of ERA Association, which gives rise to a number of benefits.

Furthermore prizes to the winning teams will be granted by the Friends of ERA Association:

- 1st winning Team: €2000
- 2nd winning Team : €1000

For programme updates: [www.era.int](http://www.era.int)  
 Programme may be subject to amendment.

## Partners

-  **France**  
 Barreau de Paris / Paris Bar
-  **Poland**  
 Izba Adwokacka w Warszawie / Warsaw Bar Association
-  **Slovakia**  
 Slovenská Advokátska Komora / Slovak Bar Association
-  **Spain**  
 Ilustre Colegio de la Abogacía de Barcelona (ICAB) /  
 Barcelona Bar Association (ICAB)

## Supporting Institutions

-  **Council of Bars and Law Societies of Europe (CCBE)**
-  **Austria**  
 Austrian Bar Association (ÖRAK)
-  **Belgium**  
 Dutch Language Section of the Brussels Bar
-  **Croatia**  
 Croatian Bar Association
-  **Cyprus**  
 Cyprus Bar Association
-  **Estonia**  
 Estonian Bar Association
-  **France**  
 Regional Lawyers' Schools within the Jurisdiction  
 of the Versailles Court of Appeal (HEDAC)  
 Regional Lawyers' School of the Grand Est (ERAGE)
-  **Germany**  
 Deutscher Anwaltverein (DAV)
-  **Greece**  
 Thessaloniki Bar Association
-  **Ireland**  
 The Bar of Ireland
-  **Italy**  
 Italian Bar Association (CNF)
-  **Latvia**  
 Latvian Bar Association
-  **Lithuania**  
 Lithuanian Bar Association
-  **Luxemburg**  
 Luxembourg Young Bar Association
-  **Poland**  
 Polish National Bar of Attorneys-at-Law (KIRP)
-  **Romania**  
 National Association of the Romanian Bars (UNBR)  
 National Institute for the Training and the Improvement of I

## Conditions of participation

### Travel and Accommodation Expenses

1. Participants will receive a fixed contribution towards their travel and accommodation expenses, and are asked to book their own travel and accommodation. The condition for payment of this contribution is to sign all attendance sheets at the event. No supporting documents are needed. The amount of the contribution will be determined by the **EU unit cost calculation guidelines**, which are based on the distance from the participant's place of work to the seminar location and will not take account of the participant's actual travel and accommodation costs.
2. Travel costs from outside Germany: participants can calculate the contribution to which they will be entitled on the European Commission website (<https://era-comm.eu/go/calculator>). The distance should be calculated from their place of work to the seminar location.

For those travelling within Germany, the contribution for travel is fixed at €64 (for a distance between 50km and 400km). Please note that no contribution will be paid for travel under 50km. For more information, please consult p.10 on <https://era-comm.eu/go/unit-cost-decision-travel>

Accommodation costs: international participants and national participants travelling more than 50km one-way will receive a fixed contribution of €357 for up to three nights accommodation. For more information, please consult p.13 on <https://era-comm.eu/go/unit-cost-decision-travel>

3. These rules do not apply to representatives of EU Institutions and Agencies who are required to cover their own travel and accommodation.
4. Successful applicants will be sent the relevant claim form and information on how to obtain payment of the contribution to their expenses. Please note that no payment is possible if the registered participant cancels their participation for any reason.

### Participation

5. Participation at the whole contest is required and participants' presence will be recorded.
6. A list of participants including each participant's address will be made available to all participants unless ERA receives written objection from the participant no later than one week prior to the beginning of the event.
7. The participant will be asked to give permission for their address and other relevant information to be stored in ERA's database in order to provide information about future ERA events, publications and/or other developments in the participant's area of interest.
8. A certificate of attendance will be distributed at the end of the conference.

## Young European Lawyers Contest 2023 Final, Trier

### Teams

Teams	Name
Team 1	Louise Janssens (B)
	Linda Zilberte (NL)
	Valentino Ramognino (FR)
	Andreea Elena Lascu (RO)
Team 2	Eline Vorlat (B)
	Wendy Mallon Doyle (IR)
	Martyna Krawczyk (PL)
	Julien Frahi (LU)
Team 4	Freek De Corte (B)
	Päivi Margna (EE)
	Assia Benfkira (FR)
	Maksymilian Jablecki (PL)
Team 5	Laure Verheyen (B)
	Daniela Demean (AT)
	Montse Gonzáles Martinéz (SP)
	Michael-John Gillen (IR)
Team 6	Michaela Scharpf (D)
	Pierre-Louis Roquet (FR)
	Silvia Eliasova (SK)
	Lyvia Fortuna (PL)
Team 8	Paulina Ambrasaite (LT)
	Adela Svingerová (SK)
	Teodora Dubar (RO)
	Baetens Thomas (B)

# Final of the Young European Lawyers Contest 2023

8 November 2023

## Moot Court at the General Court of the European Union

### I- Facts

Pursuant to Article 107(3)(b) of the TFEU and the Commission Communication of 19 March 2020 entitled "Temporary framework on State aid measures to support the economy in the current context of the COVID-19 outbreak" (OJ 2020 C 91 I, p. 1), as amended on 3 April 2020 (OJ 2020 C 112 I, p. 1) and on 8 May 2020 (OJ 2020 C 164, p. 3) (hereinafter the 'Temporary Framework'), and subsequently renewed, the Italian State notified the European Commission an individual aid in the form of a recapitalisation of EUR 2 billion (hereinafter the 'measure at issue') to the railway undertaking Italtreno.

Italtreno specialises in passenger transport, which accounts for 90% of its turnover. Freight transport accounts for 10% of its turnover. The company was severely affected during the pandemic and has not yet recovered its financial capacity prior to the COVID crisis.

The measure in question consists of a direct state participation in the capital, a so-called implied participation, a 90% state guarantee on a loan and liquid assets.

On 15 May 2023, the European Commission adopted without opening the formal investigation procedure, a decision concluding that the measure constitutes State aid compatible with the common market pursuant to Article 107(3)(b) TFEU and the Temporary Framework.

This decision was notified to the Italian Government on 16 May 2023 and to Italtreno on the following day.

On 26 May 2023, the European Commission published a notice of the decision in the Official Journal of the European Union.

On 21 August 2023, the competitor GrandsTrainsdeFrance (GTF) brought an action for annulment of the European Commission's decision of 15 May 2023 and for an order that the Commission pay the costs.

GTF relies on six pleas in law: the first alleges wrong application of the Temporary Framework; the second alleges misuse of powers; the third alleges misapplication of Article 107(3)(b) TFEU; the fourth alleges infringement of certain general principles of Union law, such as non-discrimination and legitimate expectations; the fifth alleges that the Commission failed to initiate the formal investigation procedure provided for in Article 108(2) TFEU; the sixth alleges infringement of the obligation to state reasons for the Commission's decision.

On 15 September 2023, the French Government requested to intervene in support of GTF.

On 16 September 2023, Italcargo, a company specialising in freight transport, applied to intervene in support of Italtreno.

On 1 November 2023, the European Commission asked the Court to dismiss GTF's application and order the applicant to pay the costs.

The European Commission argues that GTF lodged its application out of time, that GTF does not have legal standing to bring the action as it does not operate on the Italian rail network and that the contested decision is well founded.

**Text attached:**

Commission Communication of 19 March 2020 entitled "Temporary framework for State aid measures to support the economy in the current context of the COVID-19 outbreak" (OJ 2020, C 91 I, p. 1), as amended on 3 April 2020 (OJ 2020, C 112 I, p. 1) and on 8 May 2020 (OJ 2020, C 164, p. 3).

**II- Tasks**

The first winning team will represent the European Commission whereas the second winning team will defend the arguments on behalf of GTF.

**III- Issues**

1. Which court has jurisdiction?
2. Was the applicant on 21 August 2023 in time to bring its action for annulment of the European Commission's decision of 15 May 2023 ?
3. Is the French Government's application to intervene admissible?
4. Do you consider that Italcargo's application to intervene is admissible?
5. Regarding the admissibility of GTF's application for annulment, is it necessary to establish whether or not its competitive position has been substantially affected by the measure in question?
6. As regards the first plea in law alleging infringement of point 49 of the Temporary Framework, can the European Commission be required to prove that Italtreno would have gone bankrupt without the aid granted?
7. As regards the first plea in law, alleging infringement of point 53 of the Temporary Guidelines, was it appropriate to consider more appropriate support measures?
8. With regard to the first plea in law, concerning the failure to comply with point 54 of the Temporary Guidelines, was it appropriate to consider whether the aid in question corresponded to the exact amount needed to ensure Italtreno's return to viability?
9. With regard to the second plea in law, can the allegation by Italtreno's director that he had obtained assurances from the Italian Commissioner that the proposed aid would be approved constitute a misuse of powers on the part of the Commission which renders its decision unlawful?
10. As regards the third plea in law, can it be established that the Commission's decision should have been based on Article 107(2)(b) TFEU and not on Article 107(3)(b) TFEU?



## **ERA-CCBE Young Lawyers Contest – Negotiation exercise for company A**

### **Background information**

Company A is incorporated as a private company in the Netherlands. It is a company that sells clothing online with sales in the Netherlands, Ireland and France and also in various other EU member states. Company A was set up by Aislinn O'Toole, an Irish national, who is its CEO and a major shareholder. She is keen to relocate to Ireland from the Netherlands. The other directors are Jan-Willem Smit, who is a digital expert and Hanneke Nollen who is the Finance Director.

Company A is in discussions with Company B, which is incorporated as a private company in France and is a manufacturer of clothing similar to the clothing Company A sells. It has a large manufacturing facility in Ireland and smaller manufacturing sites in France and Italy. It sells clothes to suppliers and also direct to the public in the EU. Its online website is not very good. Its CEO is Jean-Pierre Thibaut who has a strong background in manufacturing, its Finance Director is Sylvie Philippe, its Human Resources Director is Olivier Roux, its General Council (who is also a Director) is Clair Amiel and it has a non executive director, Christophe Murphy, who has extensive experience of online clothing sales throughout Europe.

Company A and Company B have agreed to do a cross border merger under which Company A and Company B will transfer all their assets and liabilities to a new company to be established in Ireland (Newco). The new Irish company will issue shares to the members of Company A and to the members of Company B. The parties have been negotiating the common draft terms of the cross border merger and have agreed the share ratio that will be used to calculate the new shares to be issued. They have agreed not to renegotiate the share ratio. Neither Company A nor Company B has any mandatory employee participation rights and there is no requirement under Irish law for Newco to have employee representation on the board. Discussions are in English.

The draft articles of association for Newco, which have not yet been negotiated, do not set a maximum limit for the number of directors but the parties have agreed that, ideally, they do not want more than 6 directors of Newco. The draft articles set the quorum for a meeting of the directors at two and say that the Chair has a casting vote. The parties have also not yet discussed the employment contracts under which the directors of Newco will be employed, although it is agreed that there will be no changes to the existing salaries and bonuses.

Both parties think the combination of Company A and Company B into Newco will maximise their ability to manufacture and sell clothes online throughout the EU.

The parties are about to meet to discuss any remaining points of concern, including what law should govern the cross border merger agreement, the composition of the board of Newco, who should be CEO and who should be Chair of the board of directors, any changes to the articles of association and how any disputes that arise in connection with the cross border merger should be resolved.

### **Instructions to both teams**

The team for Company B will have a maximum of 15 minutes in which to put forward their negotiating position, including:

1. any points on what law should govern the agreement,
2. its proposals for the composition of the board of Newco and any changes to the draft articles of association and
3. how any disputes should be resolved.

The team for Company A will then have 15 minutes to respond to the points made and put forward their point of view and any other points of concern. The teams will then take it in turns to respond in order to progress the negotiation.

At the 55 minute point the invigilator will call time and the parties will take a 5 minute break to regroup before trying to achieve a final agreement within the overall time of 90 minutes. Both parties are very keen to reach agreement. You need not worry about any provisions of Dutch, French or Irish law or provisions relating to the required content of cross border merger agreements or any tax or competition aspects of the transaction.

## II

*(Information)*INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES  
AND AGENCIES

## EUROPEAN COMMISSION

## COMMUNICATION FROM THE COMMISSION

**Amendment to the Temporary Framework for State aid measures to support the economy in the  
current COVID-19 outbreak**

(2020/C 112 I/01)

## 1. INTRODUCTION

1. On 19 March 2020, the Commission adopted its Communication ‘Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak’<sup>(1)</sup> (‘the Temporary Framework’), which, inter alia, sets out the possibilities Member States have under Union rules to ensure liquidity and access to finance for undertakings, especially small and medium-sized undertakings (‘SMEs’) that face a sudden shortage in this period in order to allow them to recover from the current situation. The aim is to lay down a framework that enables Member States to support undertakings experiencing difficulties due to the current COVID-19 outbreak, whilst maintaining the integrity of the EU Internal Market, ensuring a level playing field.
2. Targeted and proportionate application of EU State aid control serves to make sure that national support measures are effective in helping the affected undertakings during the COVID-19 outbreak but also that they allow them to bounce back from the current situation, keeping in mind the importance of meeting the green and digital twin transitions in accordance with EU objectives.
3. The aim of this Communication is to identify additional temporary State aid measures that the Commission considers compatible under Article 107(3) TFEU in light of the COVID-19 outbreak.
4. The Commission considers that beyond ensuring access to liquidity and finance, it is also essential to facilitate COVID-19 relevant research and development, to support the construction and upgrade of testing facilities of COVID-19 relevant products, as well as the setting up of additional capacities for the production for products needed to respond to outbreak. This includes relevant medicinal products (including vaccines) and treatments, their intermediates, active pharmaceutical ingredients and raw materials; medical devices, hospital and medical equipment (including ventilators and protective clothing and equipment as well as diagnostic tools) and necessary raw materials; disinfectants and their intermediary products and raw chemical materials necessary for their production and data collection and processing tools.
5. Furthermore, under the current circumstances it is also crucial to preserve employment. Deferrals of payment of taxes and social security contributions can be a valuable tool to reduce the liquidity constraints of undertakings and preserve employment. If such deferrals apply to the whole economy, they fall outside the scope of State aid control. If they provide undertakings with a selective advantage, which can happen if they are restricted to certain sectors (e.g. transport, tourism, health), regions or types of undertakings, they involve aid within the meaning of Article 107(1) TFEU.

---

<sup>(1)</sup> Communication from the Commission of 19 March 2020, C(2020)1863 (OJ C 91I, 20.3.2020, p. 1).

6. In the same way, in order to preserve employment, Member States may envisage contributing to the wage costs of undertakings, which, due to the COVID-19 outbreak, would otherwise lay off personnel. If such support schemes apply to the whole economy, they fall outside the scope of State aid control. If they are restricted, for example, to certain sectors (e.g. transport, tourism, health), regions or types of undertakings, they involve aid within the meaning of Article 107(1) TFEU.
7. The Commission has a positive view vis-à-vis measures taken by Member States in order to increase flex-security and avoid massive layoffs. Temporary lay-off schemes of general application, which aim at providing employees with total or partial compensation for the loss of their remuneration while they are on furlough from their employment, would usually not be selective.
8. Moreover, the application of the Temporary Framework has shown the need to introduce additional clarifications and amendments as regards certain provisions, especially in section 3.1, section 3.2, section 3.3 and section 3.5.

## 2. AMENDMENTS TO THE TEMPORARY FRAMEWORK

9. The following amendments to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak will take effect as of 3 April 2020.

10. Point 16bis is introduced:

'16bis. Furthermore, the Commission considers that beyond aid measures allowed under Article 107(3)(b) TFEU and existing possibilities under Article 107(3)(c) TFEU, it is also essential to accelerate COVID-19 relevant research and development, to support testing and upscaling infrastructures that contribute to develop COVID-19 relevant products, as well as to support the production of products needed to respond to the outbreak. Therefore, this Communication lays down the conditions under which the Commission will consider such measures compatible with the internal market under Article 107(3)(c) TFEU. The Commission took due consideration of the common objective pursued by such aid measures and their positive effects on tackling the health emergency crisis provoked by the COVID-19 outbreak when balancing them against the potential negative effects of such measures on the internal market.'

11. Point 20 is replaced by the following:

'20. All aid in the different sections of this Communication may be cumulated with each other except:

- a. for aid granted under section 3.2 and section 3.3, if the aid is granted for the same underlying loan and the overall loan amount per undertaking exceeds the thresholds set out in point 25 d) or 27 d) of this Communication; and
- b. for aid granted under section 3.6, section 3.7 and section 3.8, if the aid concerns the same eligible costs. <sup>(<sup>2</sup>)</sup>

(<sup>2</sup>) Provided the rules under the 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 (General Block Exemption Regulation) and under the different de minimis Regulations are respected, the temporary aid measures covered by this Communication may be cumulated in line with the cumulation rules set out in the General Block Exemption Regulation and in the different de minimis Regulations, namely, 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 (OJ L 352, 24.12.2013, p. 1), Commission Regulation (EU) No 1408/2013 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 in the agriculture sector (OJ L 352, 24.12.2013, p. 9), Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

12. The introductory paragraph of Point 22 and points a. and c. thereof are replaced by the following:

‘22. The Commission will consider such State aid compatible with the internal market on the basis of Article 107(3)(b) TFEU, provided that all the following conditions are met (the specific provisions for the primary agriculture, the fishery and aquaculture sectors are set out in point 23):

- a. The overall aid does not exceed EUR 800 000 per undertaking. The aid may be granted in the form of direct grants, tax and payment advantages or other forms such as repayable advances, guarantees, loans and equity provided the total nominal value of such measures remains below the overall cap of EUR 800 000 per undertaking; all figures used must be gross, that is, before any deduction of tax or other charge;’
- ‘c. Aid may not be granted to undertakings that were already in difficulty (within the meaning of the General Block Exemption Regulation <sup>(3)</sup>) on 31 December 2019.’

13. Point 23 is replaced by the following:

‘23. By way of derogation from point 22(a), the following specific conditions shall apply to aid granted to undertakings in the agriculture, fishery and aquaculture sectors, in addition to the conditions of point 22 (b) to (e):

- a. the overall aid does not exceed EUR 120 000 per undertaking active in the fishery and aquaculture sector <sup>(4)</sup> or EUR 100 000 per undertaking active in the primary production of agricultural products <sup>(5)</sup>; the aid may be granted in the form of direct grants, tax and payment advantages or other forms such as repayable advances, guarantees, loans and equity provided the total nominal value of such measures does not exceed the overall cap of EUR 120 000 or EUR 100 000 per undertaking; all figures used must be gross, that is, before any deduction of tax or other charge;
- b. aid to undertakings active in the primary production of agricultural products must not be fixed on the basis of the price or quantity of products put on the market;
- c. aid to undertakings active in the fishery and aquaculture does not concern any of the categories of aid referred to in Article 1, paragraph (1) (a) to (k), of Commission Regulation (EU) No 717/2014 <sup>(6)</sup>.

14. The following Point 23bis is inserted:

‘23bis. Where an undertaking is active in several sectors to which different maximum amounts apply in accordance with points 22(a) and 23(a), the Member State concerned shall ensure, by appropriate means, such as separation of accounts, that the relevant ceiling is respected for each of these activities.’

15. Point 25 is replaced by the following:

‘25. The Commission will consider such State aid granted in the form of new public guarantees on individual loans in response to the COVID-19 outbreak as compatible with the internal market on the basis of Article 107(3)(b) TFEU provided:

- a. Guarantee premiums are set per individual loans at a minimum level, which shall increase progressively as the duration of the guaranteed loan increases, as set out in the following table:

Type of beneficiary	For 1 <sup>st</sup> year	For 2 <sup>nd</sup> -3 <sup>rd</sup> year	For 4 <sup>th</sup> -6 <sup>th</sup> year
SMEs	25 bps	50 bps	100 bps
Large enterprises	50 bps	100 bps	200 bps

<sup>(3)</sup> As defined in Article 2 (18) of the 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 (OJ L 187, 26.6.2014, p. 1). Wherever reference is made in this Temporary Framework to the definition of “undertaking in difficulty” as contained in Article 2(18) of Regulation (EU) No 651/2014, it shall be read as also referring to the definitions contained in Article 2(14) of Regulation (EU) No 702/2014 and Article 3(5) of Regulation 1388/2014 respectively.

<sup>(4)</sup> As defined in Article 2(1) of Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45).

<sup>(5)</sup> All products listed in Annex I to the TFEU with the exception of the products of the fisheries and aquaculture sector.

<sup>(6)</sup> Commission Regulation (EC) No (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45).

- b. As an alternative, Member States may notify schemes, considering the above table as a basis, but whereby guarantee duration, guarantee premiums and guarantee coverage may be modulated for each underlying individual loan principal, such as lower guarantee coverage could offset a longer duration or could allow lower guarantee premiums; a flat premium may be used for the entire duration of the guarantee, if it is higher than the minimum premiums for the 1<sup>st</sup> year set out in the table above for each type of beneficiary, as adjusted according to guarantee duration and guarantee coverage under this paragraph;
- c. The guarantee is granted by 31 December 2020 at the latest;
- d. For loans with a maturity beyond 31 December 2020, the overall amount of loans per beneficiary shall not exceed:
- i. double the annual wage bill of the beneficiary (including social charges as well as the cost of personnel working on the undertaking's site but formally in the payroll of subcontractors) for 2019, or for the last year available. In the case of undertakings created on or after 1 January 2019, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation; or
  - ii. 25 % of the beneficiary's total turnover in 2019; or
  - iii. with appropriate justification and based on self-certification by the beneficiary of its liquidity needs (<sup>(7)</sup>), the amount of the loan may be increased to cover the liquidity needs from the moment of granting for the coming 18 months for SMEs and for the coming 12 months for large enterprises;
- e. For loans with a maturity until 31 December 2020, the amount of the loan principal may be higher than under point 25(d) with appropriate justification and provided that the proportionality of the aid remains assured;
- f. The duration of the guarantee is limited to maximum six years, unless modulated according to point 25 (b), and the public guarantee may not exceed:
- i. 90 % of the loan principal where losses are sustained proportionally and under the same conditions by the credit institution and the State; or
  - ii. 35 % of the loan principal, where losses are first attributed to the State and only then to the credit institutions (*i.e.* a first-loss guarantee); and
  - iii. in both of the above cases, when the size of the loan decreases over time, for instance because the loan starts to be reimbursed, the guaranteed amount must decrease proportionally;
- g. The guarantee shall relate to investment and/or working capital loans;
- h. The guarantee may not be granted to undertakings that were already in difficulty (within the meaning of the General Block Exemption Regulation (<sup>(8)</sup>)) on 31 December 2019.'

16. Point 27 is replaced by the following:

'27. The Commission will consider State aid in the form of subsidies to public loans in response to the COVID-19 outbreak as compatible with the internal market on the basis of Article 107(3)(b) TFEU provided the following conditions are met:

- a. The loans may be granted at reduced interest rates which are at least equal to the base rate (1 year IBOR or equivalent as published by the Commission (<sup>(9)</sup>)) applicable on 1 January 2020 plus the credit risk margins as set-out in the table below:

Type of beneficiary	Credit risk margin for 1 <sup>st</sup> year	Credit risk margin for 2 <sup>nd</sup> -3 <sup>rd</sup> year	Credit risk margin for 4 <sup>th</sup> -6 <sup>th</sup> year
SMEs	25 bps ( <sup>(10)</sup> )	50 bps ( <sup>(11)</sup> )	100 bps
Large enterprises	50 bps	100 bps	200 bps

(<sup>7</sup>) The liquidity plan may include both working capital and investment costs.

(<sup>8</sup>) As defined in Article 2 (18) of the 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 (OJ L 187, 26.6.2014, p. 1).

(<sup>9</sup>) Base rates calculated in accordance with the Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6) and published on the website of DG Competition at [https://ec.europa.eu/competition/state\\_aid/legislation/reference\\_rates.html](https://ec.europa.eu/competition/state_aid/legislation/reference_rates.html).

(<sup>(10)</sup>) The minimum all in interest rate (base rate plus the credit risk margins) should be at least 10bps per year.

(<sup>(11)</sup>) The minimum all in interest rate (base rate plus the credit risk margins) should be at least 10bps per year.

- b. As an alternative, Member States may notify schemes, considering the above table as a basis, but whereby the loan maturity and the level of credit risk margins may be modulated, such as a flat credit risk margin may be used for the entire duration of the loan, if it is higher than the minimum credit risk margin for the 1<sup>st</sup> year for each type of beneficiary, as adjusted according to the loan maturity under this paragraph <sup>(12)</sup>;
  - c. The loan contracts are signed by 31 December 2020 at the latest and are limited to maximum six years, unless modulated according to point 27 (b);
  - d. For loans with a maturity beyond 31 December 2020, the overall amount of loans per beneficiary shall not exceed:
    - i. double the annual wage bill of the beneficiary (including social charges as well as the cost of personnel working on the undertaking's site but formally in the payroll of subcontractors) for 2019 or for the last year available. In the case of undertakings created on or after 1 January 2019, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation; or
    - ii. 25 % of the beneficiary's total turnover in 2019; or
    - iii. with appropriate justification and based on self-certification by the beneficiary of its liquidity needs <sup>(13)</sup>, the amount of the loan may be increased to cover the liquidity needs from the moment of granting for the coming 18 months for SMEs and for the coming 12 months for large enterprises;
  - e. For loans with a maturity until 31 December 2020, the amount of the loan principal per beneficiary may be higher than under point 27(d) with appropriate justification and provided that the proportionality of the aid remains assured;
  - f. The loan shall relate to investment and/or working capital needs;
  - g. The loan may not be granted to undertakings that were already in difficulty (within the meaning of the General Block Exemption Regulation <sup>(14)</sup>) on 31 December 2019.'
17. Section 3.5 is replaced by the following:

'Section 3.5: Short-term export credit insurance

32. The Communication from the Commission on short-term export-credit insurance ("STEC") provides that marketable risks shall not be covered by export-credit insurance with the support of Member States. As a consequence of the current COVID-19 outbreak and after having conducted the public consultation on the availability of short-term export-credit insurance for exports to all currently marketable risk countries, the Commission found that there is a lack of sufficient private insurance capacity for short-term export credits in general and that the cover for marketable risks is temporarily unavailable.

33. In that context, the Commission considers all commercial and political risks associated with exports to the countries listed in the Annex to STEC as temporarily non-marketable until 31 December 2020. <sup>(15)</sup>

18. The following section is inserted:

'Section 3.6 Aid for COVID-19 relevant research and development

34. Beyond the existing possibilities based on Article 107(3)(c) TFEU, it is essential to facilitate COVID-19 relevant research and development (R&D) to address the current emergency health crisis.

<sup>(12)</sup> The minimum all in interest rate (base rate plus the credit risk margins) should be at least 10bps per year.

<sup>(13)</sup> The liquidity needs may include both working capital and investment costs.

<sup>(14)</sup> As defined in Article 2 (18) of the 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 (OJ L 187, 26.6.2014, p. 1).

<sup>(15)</sup> Communication from the Commission amending the Annex to the 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, C(2020)2044 final of 27 March 2020 (OJ C 101I, 28.3.2020, p. 1).

35. The Commission will consider compatible with the internal market aid for R&D projects carrying out COVID-19 and other antiviral relevant research <sup>(16)</sup> including projects having received a COVID-19-specific Seal of Excellence quality label under the Horizon 2020 SME-instrument, provided that all the following conditions are met:

- a. The aid is granted in the form of direct grants, repayable advances or tax advantages by 31 December 2020;
- b. For R&D projects started as of 1 February 2020 or for projects having received a COVID-19-specific Seal of Excellence, the aid is deemed to have an incentive effect; for projects started before 1 February 2020, the aid is deemed to have an incentive effect, if the aid is necessary to accelerate or widen the scope of the project. In such cases, only the additional costs in relation to the acceleration efforts or the widened scope shall be eligible for aid;
- c. Eligible costs may refer to all the costs necessary for the R&D project during its duration, including amongst others, personnel costs, costs for digital and computing equipment, for diagnostic tools, for data collection and processing tools, for R&D services, for pre-clinical and clinical trials (trial phases I-IV), for obtaining, validating and defending patents and other intangible assets, for obtaining the conformity assessments and/or authorisations necessary for the marketing of new and improved vaccines and medicinal products, medical devices, hospital and medical equipment, disinfectants, and personal protective equipment; phase-IV trials are eligible as long as they allow further scientific or technological advance;
- d. The aid intensity for each beneficiary may cover 100 % of eligible costs for fundamental research and shall not exceed 80 % of eligible costs for industrial research and experimental development; <sup>(17)</sup>
- e. The aid intensity for industrial research and experimental development may be increased by 15 percentage points, if more than one Member State supports the research project, or it is carried out in cross-border collaboration with research organisations or other undertakings;
- f. Aid under this measure may be combined with support from other sources for the same eligible costs, provided the combined aid does not exceed the ceilings defined under points (d) and (e) above;
- g. The aid beneficiary shall commit to grant non-exclusive licences under non-discriminatory market conditions to third parties in the EEA;
- h. Aid may not be granted to undertakings that were already in difficulty (within the meaning of the General Block Exemption Regulation <sup>(18)</sup>) on 31 December 2019.'

19. The following section is introduced:

'Section 3.7 Investment aid for testing and upscaling infrastructures

36. Beyond the existing possibilities based on Article 107(3)(c) TFEU, it is essential to support testing and upscaling infrastructures that contribute to develop COVID-19 relevant products.

37. The Commission will therefore consider investment aid for the construction or upgrade of testing and upscaling infrastructures required to develop, test and upscale, up to first industrial deployment prior to mass production, COVID-19 relevant products as outlined in section 3.8 compatible with the internal market provided the following conditions are met:

- a. The aid is granted for the construction or upgrade of testing and upscaling infrastructures required to develop, test and upscale, up to first industrial deployment prior to mass production, COVID-19 relevant medicinal products (including vaccines) and treatments, their intermediates, active pharmaceutical ingredients and raw materials;

<sup>(16)</sup> COVID-19 and other antiviral relevant research includes research into vaccines, medicinal products and treatments, medical devices and hospital and medical equipment, disinfectants, and protective clothing and equipment, and into relevant process innovations for an efficient production of the required products.

<sup>(17)</sup> As defined in paragraph (84), (85) and (86) of Article 2 of the 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 (OJ L 187, 26.6.2014, p. 1).

<sup>(18)</sup> As defined in Article 2 (18) of the 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 (OJ L 187, 26.6.2014, p. 1).



medical devices, hospital and medical equipment (including ventilators and protective clothing and equipment as well as diagnostic tools) and necessary raw materials; disinfectants and their intermediary products and raw chemical materials necessary for their production; as well as data collection/processing tools;

- b. The aid is granted in the form of direct grants, tax advantages or repayable advances by 31 December 2020;
- c. For projects started as of 1 February 2020, the aid is deemed to have an incentive effect; for projects started before 1 February 2020, the aid is deemed to have an incentive effect, if the aid is necessary to accelerate or widen the scope of the project. In such cases, only the additional costs in relation to the acceleration efforts or the widened scope shall be eligible for aid;
- d. The investment project shall be completed within six months after the date of granting the aid. An investment project is considered completed when it is accepted by the national authorities as completed. Where the six-month deadline is not met, per month of delay, 25 % of the amount of aid awarded in form of direct grants or tax advantages shall be reimbursed, unless the delay is due to factors outside the control of the aid beneficiary. Where the deadline is respected, aid in the form of repayable advances is transformed into grants; if not, the repayable advance is reimbursed in equal annual instalments within five years after the date of granting the aid;
- e. Eligible costs are the investment costs necessary for setting up the testing and upscaling infrastructures required to develop the products listed in point (a) above. The aid intensity shall not exceed 75 % of the eligible costs;
- f. The maximum allowable aid intensity of the direct grant or tax advantage may be increased by an additional 15 percentage points, either if the investment is concluded within two months after the date of aid granting or date of application of the tax advantage, or if the support comes from more than one Member State. If the aid is granted in form of a repayable advance, and the investment is completed within two months, or if the support comes from more than one Member State, an additional 15 percentage points may be granted;
- g. The aid under this measure shall not be combined with other investment aid for the same eligible costs;
- h. A loss cover guarantee may be granted in addition to a direct grant, tax advantage or repayable advance, or as an independent aid measure. The loss cover guarantee is issued within one month after the undertaking applied for it; the amount of loss to be compensated is established five years after completion of the investment. The compensation amount is calculated as the difference between sum of investment costs, reasonable profit of 10 % p. a. on the investment cost over five years, and operating cost on the one hand, and the sum of the direct grant received, revenues over the five year period, and the terminal value of the project;
- i. The price charged for the services provided by the testing and upscaling infrastructure shall correspond to the market price;
- j. The testing and upscaling infrastructures shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings, which have financed at least 10 % of the investment costs may be granted preferential access under more favourable conditions;
- k. Aid may not be granted to undertakings that were already in difficulty (within the meaning of the General Block Exemption Regulation <sup>(19)</sup>) on 31 December 2019.'

20. The following section is inserted:

'Section 3.8 Investment aid for the production of COVID-19 relevant products:

38. Beyond the existing possibilities based on Article 107(3)(c) TFEU, it is essential to facilitate the production of COVID-19 relevant products. This includes: relevant medicinal products (including vaccines) and treatments, their intermediates, active pharmaceutical ingredients and raw materials; medical devices, hospital and medical equipment (including ventilators, protective clothing and equipment as well as diagnostic tools) and necessary raw materials; disinfectants and their intermediary products and raw chemical materials necessary for their production; data collection/processing tools.

<sup>(19)</sup> As defined in Article 2 (18) of the 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 (OJ L 187, 26.6.2014, p. 1).

39. The Commission will consider investment aid for the production of COVID-19 relevant products compatible with the internal market provided the following conditions are met:

- a. The investment aid is granted for the production of COVID-19 relevant products, such as medicinal products (including vaccines) and treatments, their intermediates, active pharmaceutical ingredients and raw materials; medical devices, hospital and medical equipment (including ventilators, protective clothing and equipment as well as diagnostic tools) and necessary raw materials; disinfectants and their intermediary products and raw chemical materials necessary for their production; data collection/processing tools;
- b. The aid is granted in the form of direct grants, tax advantages or repayable advances by 31 December 2020;
- c. For projects started as of 1 February 2020, the aid is deemed to have an incentive effect; for projects started before 1 February 2020, the aid is deemed to have an incentive effect, if the aid is necessary to accelerate or widen the scope of the project. In such cases, only the additional costs in relation to the acceleration efforts or the widened scope shall be eligible for aid;
- d. The investment project is completed within six months after the date of granting the aid. An investment project is considered completed when it is accepted by the national authorities as completed. Where the six-month deadline is not met, per month of delay, 25% of the amount of aid awarded in form of direct grants or tax advantages is to be reimbursed, unless the delay is due to factors outside the control of the aid beneficiary. Where the deadline is respected, aid in the form of repayable advances is transformed into grants; if not, the repayable advance is reimbursed in equal annual instalments within five years after the date of granting the aid;
- e. Eligible costs relate to all investment costs necessary for the production of the products listed in point (a) and to the costs of trial runs of the new production facilities. The aid intensity shall not exceed 80% of the eligible costs;
- f. The maximum allowable aid intensity of the direct grant or tax advantage may be increased by an additional 15 percentage points, either if the investment is concluded within two months after the date of the aid granting or the date of application of the tax advantage, or if the support comes from more than one Member State. If the aid is granted in the form of a repayable advance and the investment is completed within two months or if the support comes from more than one Member State an additional 15 percentage points may be granted;
- g. Aid under this measure shall not be combined with other investment aid for the same eligible costs;
- h. A loss cover guarantee may be granted in addition to a direct grant, tax advantage or repayable advance or as an independent aid measure. The loss cover guarantee is issued within one month after the undertaking applied for it; the amount of loss to be compensated is established five years after completion of the investment. The compensation amount is calculated as the difference between sum of investment costs, reasonable profit of 10% p.a. on the investment cost over five years, and operating cost on the one hand, and the sum of the direct grant received, revenues over the five year period, and the terminal value of the project;
- i. Aid may not be granted to undertakings that were already in difficulty (within the meaning of the General Block Exemption Regulation <sup>(20)</sup>) on 31 December 2019.'

21. The following section is introduced:

'Section 3.9 Aid in form of deferrals of tax and/or of social security contributions

40. Deferrals of payment of taxes and/or of social security contributions may be a valuable tool to reduce the liquidity constraints of undertakings (including self-employed individuals) and preserve employment. Where such deferrals are of a general application and do not favour certain undertakings, or the production of certain goods, they do not fall within the scope of Article 107(1) TFEU. If they are restricted for example to certain sectors, regions or types of undertakings, they involve aid within the meaning of Article 107(1) TFEU. <sup>(21)</sup>

<sup>(20)</sup> As defined in Article 2 (18) of the 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, (OJ L 187, 26.6.2014, p. 1).

<sup>(21)</sup> See also point 118 of the 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 C/2016/2946 (OJ C 262, 19.7.2016, p. 1).

41. The Commission will consider compatible with the internal market on the basis of Article 107(3)(b) TFEU aid schemes that consist in temporary deferrals of taxes or of social security contributions which apply to undertakings (including self-employed individuals) that are particularly affected by the COVID-19 outbreak, for example in specific sectors, regions or of a certain size. This applies also to measures provided for in relation to fiscal and social security obligations intended to ease the liquidity constraints faced by the beneficiaries, included but not limited to the deferral of payments due in instalments, easier access to tax debt payment plans and of the granting of interest free periods, suspension of tax debt recovery, and expedited tax refunds. The aid shall be granted before 31 December 2020 and the end date for the deferral shall not be later than 31 December 2022.'

22. The following section is introduced:

'Section 3.10 Aid in form of wage subsidies for employees to avoid lay-offs during the COVID-19 outbreak

42. In order to preserve employment, Member States may envisage contributing to the wage costs of undertakings (including self-employed individuals), which, due to the COVID-19 outbreak, would otherwise lay off personnel. If such support schemes apply to the whole economy, they fall outside the scope of Union State aid control. If they provide undertakings with a selective advantage, which can happen if they are restricted to certain sectors, regions or types of undertakings, they involve aid within the meaning of Article 107(1) TFEU.

43. If such measures constitute aid, the Commission will consider them compatible with the internal market on the basis of Article 107(3)(b) TFEU provided the following conditions are met:

- a. The aid is aimed at avoiding lay-offs during the COVID-19 outbreak;
- b. The aid is granted in the form of schemes to undertakings in specific sectors, regions or of a certain size that are particularly affected by the COVID-19 outbreak;
- c. The wage subsidy is granted over a period of not more than twelve months after the application for aid, for employees that would otherwise have been laid off as a consequence of the suspension or reduction of business activities due to the COVID-19 outbreak, and subject to the condition that the benefitting personnel is maintained in continuous employment for the entire period for which the aid is granted;
- d. The monthly wage subsidy shall not exceed 80% of the monthly gross salary (including employer's social security contributions) of the benefitting personnel. Member States may also notify, in particular in the interest of low wage categories, alternative calculation methods of the aid intensity, such as using the national wage average or minimum wage, provided the proportionality of the aid is maintained;
- e. The wage subsidy may be combined with other generally available or selective employment support measures, provided the combined support does not lead to overcompensation of the wage costs of the personnel concerned. Wage subsidies may further be combined with tax deferrals and deferrals of social security payments.'

23. Point 34 is renumbered as point 44 and replaced by the following:

'44. Except aid granted under section 3.9 and 3.10, Member States must publish relevant information <sup>(22)</sup> on each individual aid granted under this Communication on the comprehensive State aid website or Commission's IT tool <sup>(23)</sup> within 12 months from the moment of granting.'

24. Points 35-42 are renumbered as points 45-52.

---

<sup>(22)</sup> Referring to information required in Annex III of the Commission Regulation (EU) No. 651/2014 of 17 June 2014 and of Annex III of the Commission Regulation (EU) No 702/2014 and Annex III of the Commission Regulation (EU) No 1388/2014 of 16 December 2014. For repayable advances, guarantees, loans, and other forms the nominal value of the underlying instrument may be inserted per beneficiary. For tax and payment advantages, the aid amount of the individual aid may be indicated in ranges.

<sup>(23)</sup> The state aid transparency public search gives access to state aid individual award data provided by Member States in compliance with the European transparency requirements for state aid and can be found at <https://webgate.ec.europa.eu/competition/transparency/public?lang=en>.

## II

*(Information)*INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES  
AND AGENCIES

## EUROPEAN COMMISSION

## COMMUNICATION FROM THE COMMISSION

**Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak**

(2020/C 91 I/01)

**1. THE COVID-19 OUTBREAK, ITS IMPACT ON THE ECONOMY AND THE NEED FOR TEMPORARY MEASURES****1.1. The COVID-19 outbreak and its impact on the economy**

1. The COVID-19 outbreak is a severe public health emergency for citizens and societies, with infections in all the Union's Member States. It is also a major shock to the global and Union's economies and a coordinated economic response of Member States and EU institutions is crucial to mitigate these negative repercussions on the EU economy.
2. This shock is affecting the economy through different channels. There is a supply shock resulting from the disruption of supply chains, there is a demand shock caused by lower consumer demand and there is the negative effect of uncertainty on investment plans and the impact of liquidity constraints for undertakings.
3. The various containment measures adopted by the Member States, such as social distancing measures, travel restrictions, quarantines and lock downs are intended to ensure that the shock is as short and limited as possible. These measures have an immediate impact on both demand and supply, and hit undertakings and employees, especially in the health, tourism, culture, retail and transport sectors. Beyond the immediate effects on mobility and trade, the COVID-19 outbreak is also increasingly affecting undertakings in all sectors and of all kinds, small and medium enterprises ('SMEs') as well as large undertakings. The impact is also felt on global financial markets, in particular with concerns for liquidity. These effects will not be contained to one particular Member State and they will have a disruptive impact on the economy of the Union as a whole.
4. In the exceptional circumstances created by the COVID-19 outbreak, undertakings of all kinds may face a severe lack of liquidity. Solvent or less solvent undertakings alike may face a sudden shortage or even unavailability of liquidity. SMEs are at particular risk. This can therefore seriously affect the economic situation of many healthy undertakings and their employees in the short and medium term, while having also longer-lasting effects by endangering their survival.
5. Banks and other financial intermediaries have a key role to play in dealing with the effects of the COVID-19 outbreak, by maintaining the flow of credit to the economy. If the flow of credit is severely constrained, economic activity will decelerate sharply, as undertakings struggle to pay their suppliers and employees. Against this background, it is appropriate that Member States can take measures to incentivise credit institutions and other financial intermediaries to continue to play their role in continuing supporting economic activity in the EU.

6. Aid granted by Member States under Article 107(3)(b) TFEU under this Communication to undertakings, which is channelled through banks as financial intermediaries, benefits those undertakings directly. Such aid does not have the objective to preserve or restore the viability, liquidity or solvency of banks. Similarly, aid granted by Member States to banks under Article 107(2)(b) TFEU to compensate for direct damage suffered as a result of the COVID-19 outbreak <sup>(1)</sup> does not have the objective to preserve or restore the viability, liquidity or solvency of an institution or entity. As a result, such aid would not be qualified as extraordinary public financial support under the Directive 2014/59/EU of the European Parliament and of the Council (the BRRD) <sup>(2)</sup> nor under the Regulation 806/2014 of the European Parliament and of the Council (the SRM Regulation) <sup>(3)</sup>, and would also not be assessed under the State aid rules <sup>(4)</sup> applicable to the banking sector. <sup>(5)</sup>
  
7. If due to the COVID-19 outbreak, banks would need direct support in the form of liquidity recapitalisation or impaired asset measure, it will have to be assessed whether the measure meets the conditions of Article 32(4)(d) (i), (ii) or (iii) of the BRRD. Where the latter conditions were to be fulfilled, the bank receiving such direct support would not be deemed to be failing-or-likely-to-fail. To the extent such measures address problems linked to the COVID-19 outbreak, they would be deemed to fall under point 45 of the 2013 Banking Communication <sup>(6)</sup>, which sets out an exception to the requirement of burden-sharing by shareholders and subordinated creditors.
  
8. Undertakings may not only face insufficient liquidity, but they may also suffer significant damage because of the COVID-19 outbreak. The exceptional nature of the COVID-19 outbreak means that such damages could not have been foreseen, are of a significant scale and hence put undertakings in conditions that sharply differ from the market conditions in which they normally operate. Even healthy undertakings, well prepared for the risks inherent to the normal course of business, can struggle in these exceptional circumstances, to such an extent that their viability may be undermined.
  
9. The COVID-19 outbreak poses the risk of a serious downturn affecting the whole economy of the EU, hitting businesses, jobs and households. Well-targeted public support is needed to ensure that sufficient liquidity remains available in the markets, to counter the damage inflicted on healthy undertakings and to preserve the continuity of economic activity during and after the COVID-19 outbreak. Given the limited size of the EU budget, the main response will come from Member States' national budgets. EU State aid rules enable Member States to take swift and effective action to support citizens and undertakings, in particular SMEs, facing economic difficulties due to the COVID-19 outbreak.

<sup>(1)</sup> Such aid must be notified by Member States and the Commission will assess it under Article 107(2)(b) TFEU.

<sup>(2)</sup> OJ L 173, 12.6.2014, p. 190.

<sup>(3)</sup> OJ L 225, 30.7.2014, Article 3 (1)(29) of the SRM Regulation.

<sup>(4)</sup> Communication on the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition ('Recapitalisation Communication') (OJ C 10, 15.1.2009, p. 2), Communication from the Commission on the treatment of impaired assets in the Community financial sector ('Impaired Assets Communication') (OJ C 72, 26.3.2009, p. 1), Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules ('Restructuring Communication') (OJ C 195, 19.8.2009, p. 9), Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis ('2010 Prolongation Communication') (OJ C 329, 7.12.2010, p. 7), Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis ('2011 Prolongation Communication') (OJ C 356, 6.12.2011, p. 7), Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ('2013 Banking Communication') (OJ C 216, 30.7.2013, p. 1).

<sup>(5)</sup> Any measures to support credit institutions or other financial institutions that constitute State aid in the meaning of Article 107(1) TFEU, which fall outside the present Communication or are not covered by Article 107(2)(b) TFEU must be notified to the Commission and shall be assessed under the State aid rules applicable to the banking sector.

<sup>(6)</sup> Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis (OJ C 216, 30.7.2013, p. 1).

## 1.2. The need for close European coordination of national aid measures

10. Targeted and proportionate application of EU State aid control serves to make sure that national support measures are effective in helping the affected undertakings during the COVID-19 outbreak but also that they allow them to bounce back from the current situation, keeping in mind the importance of meeting the green and digital twin transitions in accordance with EU objectives. Likewise, EU State aid control ensures that the EU Internal Market is not fragmented and that the level playing field stays intact. The integrity of the Internal Market will also lead to a faster recovery. It also avoids harmful subsidy races, where Member States with deeper pockets can outspend neighbours to the detriment of cohesion within the Union.

## 1.3. The need for appropriate State aid measures

11. In the overall effort of Member States to tackle the effects of the COVID-19 outbreak on their economy, this Communication sets out the possibilities Member States have under EU rules to ensure liquidity and access to finance for undertakings, especially SMEs that face a sudden shortage in this period in order to allow them to recover from the current situation.
12. The Commission set out in the Communication on a Coordinated economic response to the COVID-19 outbreak of 13 March 2020 <sup>(7)</sup> the various options available to Member States outside the scope of EU State aid control and which they may put in place without the involvement of the Commission. These include measures applicable to all undertakings regarding wage subsidies, suspension of payments of corporate and value added taxes or social welfare contributions, or financial support directly to consumers for cancelled services or tickets not reimbursed by the concerned operators.
13. Member States can also design support measures in line with the General Block Exemption Regulation <sup>(8)</sup> without the involvement of the Commission.
14. In addition, on the basis of Article 107(3)(c) TFEU and as further specified in the Rescue and Restructuring State aid Guidelines, Member States can notify to the Commission aid schemes to meet acute liquidity needs and support undertakings facing financial difficulties, also due to or aggravated by the COVID-19 outbreak <sup>(9)</sup>.
15. Furthermore, on the basis of Article 107(2)(b) TFEU Member States can also compensate undertakings in sectors that have been particularly hit by the outbreak (e.g. transport, tourism, culture, hospitality and retail) and/or organisers of cancelled events for damages suffered due to and directly caused by the outbreak. Member States can notify such damage compensation measures and the Commission will assess them directly under Article 107(2)(b) TFEU. <sup>(10)</sup> The principle of 'one time last time' <sup>(11)</sup> of the Rescue and Restructuring Guidelines does not cover aid that the

<sup>(7)</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Investment Bank and the Eurogroup on Coordinated economic response to the COVID-19 Outbreak, COM(2020) 112 final of 13. 3.2020.

<sup>(8)</sup> 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 (OJ L 187 of 26.6.2014, p. 1).

<sup>(9)</sup> Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p.1). The Commission has authorised various schemes in nine different Member States.

<sup>(10)</sup> See for example, Commission decision SA. 56685, Denmark - Compensation scheme for cancellation of events related to COVID-19, [https://ec.europa.eu/competition/state\\_aid/cases1/202011/285054\\_2139535\\_70\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases1/202011/285054_2139535_70_2.pdf).

<sup>(11)</sup> See section 3.6.1 of the Rescue and Restructuring Guidelines.

Commission declares compatible under Article 107(2)(b) TFEU, since the latter type of aid is not '*rescue aid, restructuring aid or temporary restructuring support*' within the meaning of point 71 of the Rescue and Restructuring Guidelines. Therefore, Member States may compensate under Article 107(2)(b) TFEU the damages directly caused by the COVID-19 outbreak to undertakings that have received aid under the Rescue and Restructuring Guidelines.

16. To complement the above mentioned possibilities, the Commission sets out in this Communication additional temporary State aid measures that it considers compatible under Article 107 (3)(b) TFEU, which can be approved very rapidly upon notification by the Member State concerned. Moreover, notification of alternative approaches – both aid schemes and individual measures – remains possible. The aim of this Communication is to lay down a framework that allows Member States to tackle the difficulties undertakings are currently encountering whilst maintaining the integrity of the EU Internal Market and ensuring a level playing field.

## 2. APPLICABILITY OF ARTICLE 107(3)(B) OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

17. Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid 'to remedy a serious disturbance in the economy of a Member State'. In this context, the Union courts have ruled that the disturbance must affect the whole or an important part of the economy of the Member State concerned, and not merely that of one of its regions or parts of its territory. This, moreover, is in line with the need to make a strict interpretation of any exceptional provision such as Article 107(3)(b) TFEU. <sup>(12)</sup> This interpretation has been consistently applied by the Commission in its decision-making. <sup>(13)</sup>
18. Considering that the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings, the Commission considers that State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs.
19. The Commission sets out in this Communication the compatibility conditions it will apply in principle to the aid granted by Member States under Article 107(3)(b) TFEU. Member States must therefore show that the State aid measures notified to the Commission under this Communication are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of the Member State concerned and that all the conditions of this Communication are fully respected.
20. Aid granted under section 3.1 may be cumulated either with aid under section 3.2 or section 3.3, and with aid granted under section 3.5 of this Communication. <sup>(14)</sup>

## 3. TEMPORARY STATE AID MEASURES

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

21. Beyond the existing possibilities based on Article 107(3)(c) TFEU, temporary limited amounts of aid to undertakings that find themselves facing a sudden shortage or even unavailability of liquidity can be an appropriate, necessary and targeted solution during the current circumstances.

<sup>(12)</sup> Joined Cases T-132/96 and T-143/96 Freistaat Sachsen, Volkswagen AG and Volkswagen Sachsen GmbH v Commission, ECLI:EU:T:1999:326, paragraph 167.

<sup>(13)</sup> Commission Decision 98/490/EC in Case C 47/96 *Crédit Lyonnais* (OJ L 221, 8.8.1998, p. 28), point 10.1; Commission Decision 2005/345/EC in Case C 28/02 *Bankgesellschaft Berlin* (OJ L 116, 4.5.2005, p. 1), points 153 et seq.; and Commission Decision 2008/263/EC in Case C 50/06 *BAWAG* (OJ L 83, 26.3.2008, p. 7), point 166. See Commission Decision in Case NN 70/07 *Northern Rock* (OJ C 43, 16.2.2008, p. 1), Commission Decision in Case NN 25/08 *Rescue aid to Risikoabschirmung WestLB* (OJ C 189, 26.7.2008, p. 3) and Commission Decision of 4 June 2008 in *State aid C 9/08 SachsenLB* (OJ L 104, 24.4.2009, p. 34), and Commission Decision of 16 June 2017 in case .SA.32544 (2011/C) *Restructuring of TRAINOSE S.A* (OJ L 186, 24.7.2018, p. 25).

<sup>(14)</sup> The temporary aid measures provided for by this Communication can be cumulated with aid falling within the scope of the *de minimis* Regulation (OJ L 352, 24.12.2013).

22. The Commission will consider such State aid compatible with the internal market on the basis of Article 107(3)(b) TFEU, provided that all the following conditions are met (the specific provisions for the primary agricultural and the fishery and aquaculture sectors are set out in point 23):
- a. the aid does not exceed EUR 800 000 per undertaking in the form of direct grants, repayable advances, tax or payments advantages; all figures used must be gross, that is, before any deduction of tax or other charge;
  - b. the aid is granted on the basis of a scheme with an estimated budget;
  - c. the aid may be granted to undertakings that were not in difficulty (within the meaning of the General Block Exemption Regulation <sup>(15)</sup>) on 31 December 2019; it may be granted to undertakings that are not in difficulty and/or to undertakings that were not in difficulty on 31 December 2019, but that faced difficulties or entered in difficulty thereafter as a result of the COVID-19 outbreak;
  - d. the aid is granted no later than 31 December 2020; <sup>(16)</sup>
  - e. the aid granted to undertakings active in the processing and marketing of agricultural products <sup>(17)</sup> is conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned.
23. By way of derogation from point 22, for agricultural, fisheries and aquacultural sectors the following specific conditions apply:
- a. the aid does not exceed EUR 120 000 per undertaking active in the fishery and aquaculture sector <sup>(18)</sup> or EUR 100 000 per undertaking active in the primary production of agricultural products <sup>(19)</sup>; all figures used must be gross, that is, before any deduction of tax or other charge;
  - b. aid to undertakings active in the primary production of agricultural products must not be fixed on the basis of the price or quantity of products put on the market;
  - c. aid to undertakings active in the fishery and aquaculture does not concern any of the categories of aid referred to in Article 1, paragraph (1) (a) to (k), of Commission Regulation (EU) No 717/2014 <sup>(20)</sup>;
  - d. where an undertaking is active in several sectors to which different maximum amounts apply in accordance with points 22.a and 23(a), the Member State concerned ensures, by appropriate means such as separation of accounts, that for each of these activities the relevant ceiling is respected and that the highest possible amount is not exceeded in total;
  - e. all other conditions in paragraph 22 apply. <sup>(21)</sup>

<sup>(15)</sup> As defined in Article 2 (18) of the 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 (OJ L 187 of 26.6.2014, p. 1).

<sup>(16)</sup> If the aid is granted in form of tax advantages, this deadline is not applicable and the aid is considered granted when the 2020 tax declaration is due.

<sup>(17)</sup> As defined in Article 2(6) and Article 2(7) of Commission Regulation (EC) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 193, 1.7.2014, p. 1).

<sup>(18)</sup> Products listed in Annex I to Regulation No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 (OJ L 354, 28.12.2013, p. 1).

<sup>(19)</sup> All products listed in Annex I to the TFEU with the exception of the products of the fisheries and aquaculture sector, cf. previous footnote 18.

<sup>(20)</sup> Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 90, 28.6.2014, p. 45).

<sup>(21)</sup> The reference to the definition of 'undertaking in difficulty' referred to in point 22 (c) and footnote 15 and 30 shall be read as referring to the definitions contained in Article 2(14) of Regulation (EU) No 702/2014 and Article 3(5) of Regulation 1388/2014 respectively.



### 3.2. Aid in the form of guarantees on loans

24. In order to ensure access to liquidity to undertakings facing a sudden shortage, public guarantees on loans for a limited period and loan amount can be an appropriate, necessary and targeted solution during the current circumstances.
25. The Commission will consider such State aid in the form of new public guarantees on loans compatible with the internal market on the basis of Article 107(3)(b) TFEU provided:

- a. Guarantee premiums are set at a minimum level as follows:

Type of recipient	Credit risk margin for a 1-year maturity loan	Credit risk margin for a 2-3 years maturity loan	Credit risk margin for a 4-6 years maturity loan
SMEs	25bps	50bps	100bps
Large enterprises	50bps	100bps	200bps

- b. As an alternative, Member States may notify schemes, considering the above table as basis, but whereby maturity, pricing and guarantee coverage can be modulated (e.g. lower guarantee coverage offsetting a longer maturity);
- c. The guarantee is granted by 31 December 2020 at the latest;
- d. For loans with a maturity beyond 31 December 2020, the amount of the loan principal does not exceed:
- i. the double of the annual wage bill of the beneficiary (including social charges as well as the cost of personnel working on the undertakings site but formally in the payroll of subcontractors) for 2019, or for the last year available. In the case of undertakings created on or after 1 January 2019, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation; or
  - ii. 25 % of total turnover of the beneficiary in 2019; or
  - iii. with appropriate justification and based on a self-certification by the beneficiary of its liquidity needs <sup>(22)</sup>, the amount of the loan may be increased to cover the liquidity needs from the moment of granting for the coming 18 months for SMEs and for the coming 12 months for large enterprises.
- e. For loans with a maturity until 31 December 2020, the amount of the loan principal may be higher than under point 25(d) with appropriate justification and provided that proportionality of the aid remains assured;
- f. The duration of the guarantee is limited to maximum six years and the public guarantee does not exceed:
- i. 90 % of the loan principal where losses are sustained proportionally and under same conditions, by the credit institution and the State; or
  - ii. 35 % of the loan principal, where losses are first attributed to the State and only then to the credit institutions (i.e. a first-loss guarantee); and
  - iii. in both of the above cases, when the size of the loan decreases over time, for instance because the loan starts to be reimbursed, the guaranteed amount has to decrease proportionally;
- g. The guarantee may relate to both investment and working capital loans;
- h. The guarantee may be granted to undertakings that were not in difficulty (within the meaning of the General Block Exemption Regulation <sup>(23)</sup>) on 31 December 2019; it may be granted to undertakings that are not in difficulty and/or to undertakings that were not in difficulty on 31 December 2019, but that faced difficulties or entered in difficulty thereafter as a result of the COVID-19 outbreak.

<sup>(22)</sup> The liquidity plan may include both working capital and investment costs.

<sup>(23)</sup> As defined in Article 2 (18) of the 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 (OJ L 187 of 26.6.2014, p. 1).

### 3.3. Aid in the form of subsidised interest rates for loans

26. In order to ensure access to liquidity to undertakings facing a sudden shortage, subsidised interest rates for a limited period and loan amount can be an appropriate, necessary and targeted solution during the current circumstances. For the same underlying loan principal, aid granted under section 3.2 and section 3.3 cannot be cumulated.

27. The Commission will consider State aid in the form of subsidies to public loans compatible with the internal market on the basis of Article 107(3)(b) TFEU provided the following conditions are met:

a. The loans may be granted at reduced interest rates which are at least equal to the base rate (1 year IBOR or equivalent as published by the Commission <sup>(24)</sup>) applicable on 1 January 2020 plus the credit risk margins as set-out in the table below:

Type of recipient	Credit risk margin for a 1-year maturity loan	Credit risk margin for a 2-3 years maturity loan	Credit risk margin for a 4-6 years maturity loan
SMEs	25bps <sup>(25)</sup>	50bps <sup>(26)</sup>	100bps
Large enterprises	50bps	100bps	200bps

b. As an alternative, Member States may notify schemes, considering the above table as basis, but whereby maturity, pricing and guarantee coverage can be modulated (e.g. lower guarantee coverage offsetting a longer maturity);

c. The loan contracts are signed by 31 December 2020 at the latest and are limited to maximum 6 years;

d. For loans with a maturity beyond 31 December 2020, the amount of the loan does not exceed:

- i. the double of the annual wage bill of the beneficiary (including social charges as well as the cost of personnel working on the company site but formally in the payroll of subcontractors) for 2019 or for the last year available. In the case of undertakings created on or after 1 January 2019, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation; or
- ii. 25 % of the total turnover of the beneficiary in 2019; or
- iii. with appropriate justification and based on self-certification by the beneficiary's of its liquidity needs <sup>(27)</sup>, the amount of the loan may be increased to cover the liquidity needs from the moment of granting for the coming 18 months for SMEs and for the coming 12 months for large enterprises.

e. For loans with a maturity until 31 December 2020, the amount of the loan principal may be higher than under point 27(d) with appropriate justification and provided that proportionality of the aid remains assured.

f. The loan may relate to both investment and working capital needs;

g. The loan may be granted to undertakings that were not in difficulty (within the meaning of the General Block Exemption Regulation <sup>(28)</sup>) on 31 December 2019; it may be granted to undertakings that are not in difficulty and/or to undertakings that were not in difficulty on 31 December 2019, but that faced difficulties or entered in difficulty thereafter as a result of the COVID-19 outbreak.

<sup>(24)</sup> Base rates calculated in accordance with the Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.01.2008, p.6.) and published on the website of DG Competition at [https://ec.europa.eu/competition/state\\_aid/legislation/reference\\_rates.html](https://ec.europa.eu/competition/state_aid/legislation/reference_rates.html).

<sup>(25)</sup> The minimum all in interest rate (base rate plus the credit risk margins) should be at least 10bps per year.

<sup>(26)</sup> The minimum all in interest rate (base rate plus the credit risk margins) should be at least 10bps per year.

<sup>(27)</sup> The liquidity needs may include both working capital and investment costs.

<sup>(28)</sup> As defined in Article 2 (18) of the 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 (OJ L 187 of 26.6.2014, p. 1).

#### 3.4. Aid in the form of guarantees and loans channelled through credit institutions or other financial institutions

28. Aid in the form of public guarantees and reduced interest rates pursuant to section 3.2 and section 3.3 of this Communication can be provided to the undertakings facing a sudden liquidity shortage directly or through credit institutions and other financial institutions as financial intermediaries. In the latter case, the conditions set out below must be complied with.
29. While such aid is directly targeting undertakings facing a sudden liquidity shortage and not credit institutions or other financial institutions, it may also constitute an indirect advantage to the latter. Nevertheless, such indirect aid does not have the objective to preserve or restore the viability, liquidity or solvency of the credit institutions. As a result, the Commission considers that such aid should not be qualified as extraordinary public financial support according to Article 2(1) No 28 BRRD and Article 3(1) No 29 SRM-R, and should not be assessed under the State aid rules applicable to the banking sector <sup>(29)</sup>.
30. In any event, it is appropriate to introduce certain safeguards in relation to the possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition.
31. The credit institutions or other financial institutions should, to the largest extent possible, pass on the advantages of the public guarantee or subsidised interest rates on loans to the final beneficiaries. The financial intermediary shall be able to demonstrate that it operates a mechanism that ensures that the advantages are passed on to the largest extent possible to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates. When there is a legal obligation to extend the maturity of existing loans for SMEs no guarantee fee may be charged.

#### 3.5. Short-term export credit insurance

32. The Communication from the Commission on short-term export-credit insurance <sup>(30)</sup> (the "STEC") stipulates that marketable risks cannot be covered by export-credit insurance with the support of Member States. <sup>(31)</sup> As a consequence of the current outbreak, it cannot be excluded that, in certain countries cover for marketable risks could be temporarily unavailable. <sup>(32)</sup>
33. In this context, Member States may demonstrate the lack of market by providing sufficient evidence of the unavailability of cover for the risk in the private insurance market. Use of the exemption concerning non-marketable risks envisaged in paragraph 18(d) of the STEC will in any case be considered justified, if:
  - a. a large well-known international private export credits insurer and a national credit insurer produce evidence of the unavailability of such cover; or
  - b. at least four well-established exporters in the Member State produce evidence of refusal of cover from insurers for specific operations.

### 4. MONITORING AND REPORTING

34. Member States must publish relevant information <sup>(33)</sup> on each individual aid granted under this Communication on the comprehensive State aid website within 12 months from the moment of granting.

<sup>(29)</sup> See point 6 of this Temporary Framework.

<sup>(30)</sup> OJ C 392, 19.12.2012, p.1.

<sup>(31)</sup> Marketable risks are commercial and political risks on public and non-public debtors established in countries listed in the Annex to the STEC, with a maximum risk period of less than two years.

<sup>(32)</sup> Section 4.2 of the STEC describes the exceptions to the definition of marketable risks for temporarily non-marketable risk, while section 4.3 sets out conditions for providing cover for temporarily non-marketable risks. Section 5 sets out the procedural requirements, in particular when a notification is required and what level of proof is required.

<sup>(33)</sup> Referring to information required in Annex III of the Commission Regulation (EU) No 651/2014 of 17 June 2014 and of Annex III of the Commission Regulation (EU) No 702/2014 and Annex III of the Commission Regulation (EU) No 1388/2014 of 16 December 2014.

35. Member States must submit annual reports to the Commission. <sup>(34)</sup>
36. By 31 December 2020, Member States must provide the Commission with a list of measures put in place on the basis of schemes approved based on this Communication.
37. Member States must ensure that detailed records regarding the granting of aid provided for by this Communication are maintained. Such records, which must contain all information necessary to establish that the necessary conditions have been observed, must be maintained for 10 years upon granting of the aid and be provided to the Commission upon request.
38. The Commission may request additional information regarding the aid granted, to verify whether the conditions laid down in the Commission decision approving the aid measure have been met.

## 5. FINAL PROVISIONS

39. The Commission applies this Communication from 19 March 2020, having regard to the economic impact of COVID-19 outbreak, which required immediate action. This Communication is justified by the current exceptional circumstances and will not be applied after 31 December 2020. The Commission may review it before that date on the basis of important competition policy or economic considerations. Where this would be helpful, the Commission may also provide further clarifications of its approach to particular issues.
40. The Commission applies the provisions of this Communication to all relevant notified measures as of 19 March 2020 even if the measures were notified prior to that date.
41. In accordance with the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid <sup>(35)</sup> the Commission applies the following in respect of non-notified aid:
  - a. this Communication, if the aid was granted after 1 February 2020;
  - b. the rules applicable when the aid was granted in all other cases.
42. The Commission, in close cooperation with the Member States concerned, ensures swift adoption of decisions upon clear and complete notification of measures covered by this Communication. Member States should inform the Commission of their intentions and notify plans to introduce such measures as early and comprehensively as possible. The Commission will provide guidance and assistance to Member States in this process.

---

<sup>(34)</sup> OJ L 140, 30.4.2004, p. 1.

<sup>(35)</sup> OJ C 119, 22.5.2002, p. 22.

**COMMUNICATION FROM THE COMMISSION****Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak**

(2020/C 164/03)

**1. INTRODUCTION**

1. On 19 March 2020, the Commission adopted its Communication ‘Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak’ <sup>(1)</sup> (the ‘Temporary Framework’). On 3 April 2020, it adopted a first amendment to enable aid to accelerate research, testing and production of COVID-19 relevant products, to protect jobs and to further support the economy during the current crisis <sup>(2)</sup>.
2. A targeted and proportionate application of EU State aid control ensures that national support measures effectively help affected undertakings during the COVID-19 outbreak, whilst limiting undue distortions to the Internal Market, maintaining the integrity of the Internal Market and ensuring a level playing field. This will contribute to the continuity of economic activity during the COVID-19 outbreak and provide the economy with a strong platform to recover from the crisis, keeping in mind the importance of meeting the green and digital transitions, in line with EU law and objectives.
3. The aim of this Communication is to identify additional temporary State aid measures that the Commission considers compatible under Article 107(3)(b) of the Treaty on the Functioning of the European Union (TFEU) in light of the COVID-19 outbreak.
4. First, the Commission considers that otherwise viable non-financial undertakings subject to a temporary liquidity crisis due to the COVID-19 outbreak may face longer-term solvency issues. For a large number of these undertakings, the emergency measures put in place to control the spread of the COVID-19 outbreak have resulted in a decrease or even suspension of their production of goods and/or the provision of services, as well as a significant demand shock. The resulting losses will be reflected in a decrease of undertakings’ equity and will negatively affect their ability to take on loans from financial institutions.
5. Reduced equity for undertakings in markets with low demand and disrupted supply aggravates the risk of a serious economic downturn affecting potentially the whole EU economy for a longer period. Well-targeted public interventions providing equity and/or hybrid capital instruments to undertakings could reduce the risk for the EU economy of a significant number of insolvencies. They could thereby contribute to preserving the continuity of economic activity during the COVID-19 outbreak and to supporting subsequent economic recovery.
6. This Communication therefore sets out the criteria under EU State aid rules, based on which Member States may provide public support in the form of equity and/or hybrid capital instruments to undertakings facing financial difficulties due to the COVID-19 outbreak. It aims at ensuring that the disruption of the economy does not result in the unnecessary exit from the market of undertakings that were viable before the COVID-19 outbreak. Recapitalisations must therefore not exceed the minimum needed to ensure the viability of the beneficiary, and should not go beyond restoring the capital structure of the beneficiary to the one predating the COVID-19 outbreak.
7. The Commission underlines that providing national public support in the form of equity and/or hybrid capital instruments to undertakings facing financial difficulties due to the COVID-19 outbreak, as part of schemes or in specific individual cases, should only be considered if no other appropriate solution can be found and be subject to stringent conditions. This is because such instruments are highly distortive for competition between undertakings. Such interventions should therefore also be subject to clear conditions as regards the State’s entry, remuneration and exit from the undertakings concerned, governance provisions and appropriate measures to limit distortions of competition.

<sup>(1)</sup> Communication from the Commission of 19 March 2020, C(2020)1863 (OJ C 91 I, 20.3.2020, p. 1).

<sup>(2)</sup> Communication from the Commission of 3 April 2020, C(2020) 2215 (OJ C 112 I, 4.4.2020, p. 1).

8. If support were to be granted at EU level, taking into account the EU common interest, the risk of distortion to the Internal Market could be lower, and may therefore require less stringent conditions to be imposed. The Commission considers that additional EU level support and funds are necessary 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 support their economy and the EU's competitiveness as a whole.
9. The green transition and the digital transformation will play a central and priority role in ensuring a successful recovery. The Commission welcomes steps taken by Member States to take these challenges into account when designing national support measures, and recalls their responsibility in ensuring that such measures do not hinder the achievement of EU climate and digital objectives. Furthermore, the Commission notes that designing national support measures in a way that meets the EU's policy objectives related to green and digital transformation of their economies will allow for a more sustainable long term growth, and promote the transformation to the agreed EU's objective of climate neutrality by 2050. In this context of aid to remedy a serious disturbance in the economy of Member States, it is primarily the responsibility of Member States to design national support measures in a way that meets their policy objectives. For aid under this Communication, large undertakings shall report on how the aid received supports their activities in line with EU objectives and national obligations linked to the green and digital transformation.
10. Furthermore, a number of Member States are considering taking an equity stake in strategic companies, to ensure that their contribution to the proper functioning of the EU economy is not jeopardised. The Commission recalls that the TFEU is neutral as regards public versus private ownership (Article 345 TFEU). If Member States purchase existing shares of undertakings at market price or invest *pari passu* with private shareholders, this normally does not constitute State aid <sup>(3)</sup>. Similarly, if Member States decide to purchase newly issued shares and/or provide undertakings with other types of equity support or hybrid capital instruments on market terms, i.e. under conditions complying with the Market Economy Operator Principle, this also does not constitute State aid.
11. The Commission also recalls that there are a number of additional tools to deal with acquisitions of strategic companies. In its Communication issued on 25 March 2020 <sup>(4)</sup>, the Commission called upon Member States that already have an existing foreign direct investment screening mechanism in place to make full use of such tools to prevent capital flows from non-EU countries that could undermine EU's security or public order. The Commission also called on Member States that currently do not have a screening mechanism, or whose screening mechanisms do not cover all relevant transaction to set up a fully-fledged screening mechanism, in full compliance with Union law, including the FDI Screening Regulation <sup>(5)</sup> and free movement of capital (Article 63 TFEU), and international obligations.
12. Second, the Commission considers that subordinated debt can also be an appropriate means to support undertakings facing financial difficulties due to the COVID-19 outbreak. In particular, it is a less distortive instrument than equity or hybrid capital, given that it cannot be converted into equity when the company is a going concern. This Communication therefore introduces the possibility for Member States to grant aid in this additional form in section 3.3 of the Temporary Framework, which concerns debt instruments, subject to additional safeguards to protect the level playing field in the Internal Market. However, if subordinated debt goes beyond the ceilings set out in section 3.3, such subordinated debt measure should be assessed in line with the conditions for COVID-19 recapitalisation measures set out in section 3.11 to ensure equal treatment.

<sup>(3)</sup> See section 4.2.3 of the 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, C/2016/2946 (OJ C 262, 19.7.2016, p. 1).

<sup>(4)</sup> Communication from the Commission – Guidance to the Member States concerning foreign direct investment and free movement of capital from third countries, and the protection of Europe's strategic assets, ahead of the application of Regulation (EU) 2019/452 (FDI Screening Regulation), C(2020) 1981 final of 25.3.2020.

<sup>(5)</sup> Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 79 I, 21.3.2019, p. 1).

13. Third, the application of the Temporary Framework has shown the need to introduce clerical modifications as well as additional clarifications and amendments as regards certain provisions in section 3.1, section 3.2, section 3.3, section 3.4, section 3.7, section 4 and section 5.
14. Finally, the Commission recognises that to ensure a successful recovery, additional large-scale private and public investments will be needed to meet the challenges and seize the opportunities of the green and digital twin transitions. In this context, the Commission recalls that this amendment to the Temporary Framework complements rather than replaces existing possibilities under EU State aid rules for Member States to provide support. For example, as regards capital support, in particular to innovative companies, the Commission's Risk Finance Guidelines <sup>(6)</sup> and the General Block Exemption Regulation <sup>(7)</sup> provide ample possibilities for Member States.
15. Similarly, Member States can decide to grant State aid to support green and digital innovation and investment, and increase the level of environmental protection in line with existing State aid rules <sup>(8)</sup>. 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.

## 2. AMENDMENTS TO THE TEMPORARY FRAMEWORK

16. The following amendments to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak will take effect as of 8 May 2020.
17. Point 7 is replaced by the following:
  - '7. If due to the COVID-19 outbreak, banks would need extraordinary public financial support (see Article 2(1) (28) BRRD and Article 3(1)(29) SRMR) in the form of liquidity, recapitalisation or impaired asset measure, it will have to be assessed whether the measure meets the conditions of Article 32(4)(d)(i), (ii) or (iii) of the BRRD and Article 18(4)(d)(i), (ii) or (iii) of the SRMR. Where the latter conditions are fulfilled, the bank receiving such extraordinary public financial support would not be deemed to be failing-or-likely-to-fail. To the extent such measures address problems linked to the COVID-19 outbreak, they would be deemed to fall under point 45 of the 2013 Banking Communication <sup>(9)</sup>, which sets out an exception to the requirement of burden-sharing by shareholders and subordinated creditors.'
18. Point 9 is replaced by the following:
  - '9. The COVID-19 outbreak poses the risk of a serious downturn affecting the whole economy of the EU, hitting businesses, jobs and households. Well-targeted public support is needed to ensure that sufficient liquidity remains available in the markets, to counter the damage inflicted on healthy undertakings and to preserve the continuity of economic activity during and after the COVID-19 outbreak. Furthermore, Member States can decide support to operators in the travel and tourism industry to ensure that reimbursement claims caused by the COVID-19 outbreak are satisfied with a view to ensuring the protection of passenger and consumer rights, and equal treatment of passengers and travellers. Given the limited size of the EU budget, the main response

<sup>(6)</sup> Communication from the Commission – Guidelines on State aid to promote risk finance investments (OJ C 19, 22.1.2014, p. 4).

<sup>(7)</sup> 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 (OJ L 187, 26.6.2014, p. 1).

<sup>(8)</sup> For example, Guidelines on State aid for environmental protection and energy 2014-2020 (OJ C 200, 28.6.2014, p. 1), Guidelines for the application of state aid rules in relation to the rapid deployment of broadband networks (OJ C 25, 26.1.2013, p. 1), Guidelines on regional State aid for 2014-2020 (OJ C 209, 23.7.2013, p. 1), Framework for State aid for research and development and innovation (OJ C 198, 27.6.2014, p. 1) and Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest (OJ C 188, 20.6.2014, p. 4).

<sup>(9)</sup> Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis (OJ C 216, 30.7.2013, p. 1).

will come from Member States' national budgets. EU State aid rules enable Member States to take swift and effective action to support citizens and undertakings, in particular SMEs, facing economic difficulties due to the COVID-19 outbreak.'

19. Point 13 is replaced by the following:

'13. Member States may also design support measures in line with Block Exemption Regulations <sup>(10)</sup> without the involvement of the Commission.'

20. Point 20 is replaced by the following:

'20. Temporary aid measures covered by this Communication may be cumulated with one another in line with the provisions in the specific sections of this Communication. Temporary aid measures covered by this Communication may be cumulated with aid under de minimis Regulations <sup>(11)</sup> or with aid under Block Exemption Regulations <sup>(12)</sup> provided the provisions and cumulation rules of those Regulations are respected.'

21. Point 20bis is introduced:

'20bis. Aid to credit and financial institutions is not to be assessed under this Communication except for: (i) indirect advantages to credit or financial institutions channelling aid in the form of loans or guarantees under sections 3.1 to 3.3 pursuant to the safeguards of section 3.4, and (ii) aid under section 3.10 provided the scheme is not targeting exclusively employees from the financial sector.'

22. The title of section 3.1 is replaced by the following:

'3.1. Limited amounts of aid'

23. In point 22, footnote 16 is replaced by the following:

'If the aid is granted in the form of a tax advantage, the tax liability in relation to which that advantage is granted must have arisen no later than 31 December 2020.'

---

<sup>(10)</sup> 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 (OJ L 187, 26.6.2014, p. 1), Commission Regulation (EC) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 193, 1.7.2014, p. 1) and Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 369, 24.12.2014, p. 37).

<sup>(11)</sup> 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 (OJ L 352, 24.12.2013, p. 1), Commission Regulation (EU) No 1408/2013 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 in the agriculture sector (OJ L 352, 24.12.2013, p. 9), Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

<sup>(12)</sup> 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 (General Block Exemption Regulation), Commission Regulation (EC) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 193, 1.7.2014, p. 1) and Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 369, 24.12.2014, p. 37).



24. Point 23bis is replaced by the following:

'23bis. Where an undertaking is active in several sectors to which different maximum amounts apply in accordance with points 22(a) and 23(a), the Member State concerned shall ensure, by appropriate means, such as separation of accounts, that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 800 000 is not exceeded per undertaking. Where an undertaking is active in the sectors covered by point 23(a), the overall maximum amount of EUR 120 000 should not be exceeded per undertaking.'

25. Point 24bis is introduced:

'24bis. Aid granted under section 3.2 shall not be cumulated with aid granted for the same underlying loan principal under section 3.3 and vice versa. Aid granted under section 3.2 and section 3.3 may be cumulated for different loans provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 25(d) or in point 27(d). A beneficiary may benefit in parallel from multiple measures under section 3.2 provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 25(d) and (e).'

26. Letter (iii) in point 25(d) is replaced by the following:

'iii. with appropriate justification provided by the Member State to the Commission (for example in connection with the characteristics of certain type of undertakings), the amount of the loan may be increased to cover the liquidity needs from the moment of granting for the coming 18 months for SMEs <sup>(13)</sup> and for the coming 12 months for large enterprises. The liquidity needs should be established through self-certification by the beneficiary <sup>(14)</sup>.'

27. Point 25(e) is replaced by the following:

'e. For loans with a maturity until 31 December 2020, the amount of the loan principal may be higher than under point 25(d) with appropriate justification provided by the Member State to the Commission, and provided that the proportionality of the aid remains assured and is demonstrated by the Member State to the Commission.'

28. Point 26 is replaced by the following:

'26. In order to ensure access to liquidity to undertakings facing a sudden shortage, subsidized interest rates for a limited period and loan amount may be an appropriate, necessary and targeted solution during the current circumstances. In addition, subordinated debt, which is subordinated to ordinary senior creditors in the case of insolvency proceedings, may also be an appropriate, necessary and targeted solution during the current circumstances. Such debt is a less distortive instrument than equity or hybrid capital, since it cannot be converted automatically into equity when the company is a going concern. Therefore, aid in form of subordinated debt <sup>(15)</sup> must fulfil the respective conditions under section 3.3, which concerns debt instruments. However, as it increases the ability of companies to take on senior debt in a way similar to capital support, a credit risk mark-up and a further limitation as to the amount compared to senior debt (one third for large enterprises and half the amount for SMEs, as defined in point 27(d) (i) or (ii)), shall apply in addition. Beyond these ceilings, subordinated debt should be assessed in line with the conditions for COVID-19 recapitalisation measures set out in section 3.11 to ensure equal treatment.'

<sup>(13)</sup> As defined in Annex I of 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 (General Block Exemption Regulation).

<sup>(14)</sup> The liquidity plan may include both working capital and investment costs.

<sup>(15)</sup> Except if such aid complies with the conditions of section 3.1 of this Communication.

29. A new point 26bis is introduced as follows:

'26bis. Aid granted under section 3.3 shall not be cumulated with aid granted for the same underlying loan principal under section 3.2 and vice versa. Aid granted under section 3.2 and section 3.3 may be cumulated for different loans provided the overall amount of loans per beneficiary does not exceed the thresholds set out in point 25(d) or in point 27(d). A beneficiary may benefit in parallel from multiple measures under section 3.3 provided the overall amount of loans per beneficiary does not exceed the ceilings set out in points 27(d) and (e).'

30. Letter (iii) in point 27(d) is replaced by the following:

'iii. with appropriate justification provided by the Member State to the Commission (for example in connection with the characteristics of certain type of undertakings), the amount of the loan may be increased to cover the liquidity needs from the moment of granting for the coming 18 months for SMEs <sup>(16)</sup> and for the coming 12 months for large enterprises. The liquidity needs should be established through self-certification by the beneficiary <sup>(17)</sup>.'

31. Point 27(e) is replaced by the following:

'e. For loans with a maturity until 31 December 2020, the amount of the loan principal may be higher than under point 27(d) with appropriate justification provided by the Member State to the Commission, and provided that the proportionality of the aid remains assured and is demonstrated by the Member State to the Commission.'

32. Point 27bis is introduced as follows:

'27bis Debt instruments, which are subordinated to ordinary senior creditors in the case of insolvency proceedings may be granted at reduced interest rates, which are at least equal to the base rate and the credit risk margins referred to in the table of point 27(a) plus 200 bps for large enterprises and 150 bps for SMEs. The alternative possibility of point 27(b) applies to such debt instruments. Points 27(c), 27 (f) and 27 (g) shall also be complied with. If the amount of subordinated debt exceeds both of the following ceilings <sup>(18)</sup>, the compatibility of the instrument with the Internal Market is determined pursuant to section 3.11:

- i. Two thirds of the annual wage bill of the beneficiary for large enterprises and the annual wage bill of the beneficiary for SMEs, as defined in point 27(d)(i), and
- ii. 8,4 % of the beneficiary's total turnover in 2019 for large enterprise and 12,5 % of the beneficiary's total turnover in 2019 for SMEs.'

33. Point 28 is replaced by the following:

'28. Aid in the form of guarantees and loans pursuant to section 3.1, section 3.2 and section 3.3 of this Communication may be provided to undertakings facing a sudden liquidity shortage directly or through credit institutions and other financial institutions as financial intermediaries. In the latter case, the conditions set out below must be complied with.'

34. Point 31 is replaced by the following:

'31. The credit institutions or other financial institutions should, to the largest extent possible, pass on the advantages of the public guarantee or subsidised interest rates on loans to the final beneficiaries. The financial intermediary must be able to demonstrate that it operates a mechanism that ensures that the advantages are passed on to the largest extent possible to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates than without such public guarantees or loans.'

<sup>(16)</sup> As defined in Annex I of the General Block Exemption Regulation.

<sup>(17)</sup> The liquidity plan may include both working capital and investment costs.

<sup>(18)</sup> If coupon payments are capitalised this must be taken into account when determining these ceilings, provided that such capitalisation was planned or foreseeable at the time of notification of the measure. Also any other State aid measure in the form of subordinated debt granted in the context of the COVID-19 outbreak, even outside this Communication, must be included in such calculation. However, subordinated debt granted in compliance with section 3.1 of this Communication does not count for these ceilings.

35. Letter (j) in point 37 is replaced by the following:

- j. The testing and upscaling infrastructures shall be open to several users and access shall be granted on a transparent and non-discriminatory basis. Undertakings, which have financed at least 10 % of the investment costs may be granted preferential access under more favourable conditions.'

36. Point 43bis is introduced:

- '43bis. To the extent that such a scheme includes also employees of credit or financial institutions, any aid to those institutions does not have the objective to preserve or restore their viability, liquidity or solvency, given the predominantly social objective of such aid <sup>(19)</sup>. As a result, the Commission considers that such aid should not be qualified as extraordinary public financial support according to Article 2(1) (28) BRRD and Article 3(1) (29) SRMR, and should not be assessed under the State aid rules applicable to the banking sector <sup>(20)</sup>.'

37. The following section is inserted:

### '3.11. **Recapitalisation measures**

44. This Temporary Framework sets out the criteria under EU State aid rules, based on which Member States may provide public support in the form of equity and/or hybrid capital instruments to undertakings facing financial difficulties due to the COVID-19 outbreak <sup>(21)</sup>. It aims at ensuring that the disruption of the economy does not result in the unnecessary exit from the market of undertakings that were viable before the COVID-19 outbreak. Recapitalisations must therefore not exceed the minimum needed to ensure the viability of the beneficiary, and should not go beyond restoring the capital structure of the beneficiary to the one predating the COVID-19 outbreak. Large undertakings must report on how the aid received supports their activities in line with EU objectives and national obligations linked to the green and digital transformation, including the EU objective of climate neutrality by 2050.

45. At the same time, the Commission underlines that providing national public support in the form of equity and/or hybrid capital instruments, as part of schemes or in individual cases, should only be considered if no other appropriate solution can be found. Moreover, the issuing of such instruments should be subject to stringent conditions because they are highly distortive for competition between undertakings. Such interventions must therefore be subject to clear conditions as regards the State's entry, remuneration and exit from the equity of the undertakings concerned, governance provisions and appropriate measures to limit distortions of competition. Against this background, the Commission notes that designing national support measures in a way that meets the EU's policy objectives related to green and digital transformation of their economies will allow for a more sustainable long-term growth, and promote the transformation to the agreed EU objective of climate neutrality by 2050.

#### 3.11.1. *Applicability*

46. The following conditions shall apply to recapitalisation schemes and individual recapitalisation measures of Member States for non-financial undertakings (collectively referred to as 'COVID-19 recapitalisation' measures) under this Communication, which are not covered by section 3.1 of this Communication. They apply to COVID-19 recapitalisation measures for large undertakings and SMEs <sup>(22)</sup>.

47. The following conditions shall also apply to subordinated debt instruments that exceed both of the ceilings referred to in point 27bis (i) and (ii) in section 3.3 of this Communication.

<sup>(19)</sup> See by analogy Commission decision SA.49554-CY- Cypriot scheme for non-performing loans collateralized with primary residences (Estia), recital 73 and Commission decision SA.53520-EL- Primary Residence Protection Scheme, recital 71.

<sup>(20)</sup> See point 6 of this Communication.

<sup>(21)</sup> The possibility of offering aid in the form of equity and/or hybrid capital instruments, but for much lower nominal amounts, is already provided under the conditions of section 3.1 of this Communication.

<sup>(22)</sup> As set out in point 16 of the Communication, notification of alternative approaches remains possible in line with Article 107(3)(b) TFEU.

48. COVID-19 recapitalisation measures shall not be granted later than 30 June 2021.

### 3.11.2. Eligibility and entry conditions

49. The COVID-19 recapitalisation measure must fulfil the following conditions:

- (a) without the State intervention the beneficiary would go out of business or would face serious difficulties to maintain its operations. Such difficulties may be shown by the deterioration of, in particular, the beneficiary's debt to equity ratio or similar indicators;
- (b) it is in the common interest to intervene. This may relate to avoiding social hardship and market failure due to significant loss of employment, the exit of an innovative company, the exit of a systemically important company, the risk of disruption to an important service, or similar situations duly substantiated by the Member State concerned;
- (c) the beneficiary is not able to find financing on the markets at affordable terms and the horizontal measures existing in the Member State concerned to cover liquidity needs are insufficient to ensure its viability; and
- (d) the beneficiary is not an undertaking that was already in difficulty on 31 December 2019 (within the meaning of the General Block Exemption Regulation <sup>(23)</sup>).

50. Member States shall grant COVID-19 recapitalisation measures under an aid scheme approved by the Commission only following a written request for such aid by the prospective beneficiary undertakings. As regards individually notifiable aid, Member States shall provide evidence of such a written request as part of the notification of the individual aid measure to the Commission.

51. The requirements of this section and sections 3.11.4, 3.11.5, 3.11.6 and 3.11.7 apply to both COVID-19 recapitalisation schemes and individual aid measures. When approving a scheme, the Commission will request the separate notification of individual aid above the threshold of EUR 250 million. In relation to such notifications the Commission will assess whether existing financing in the market or horizontal measures to cover liquidity needs are insufficient to ensure the viability of the beneficiary; that the selected recapitalisation instruments and the conditions attached to them are appropriate to address the beneficiary's serious difficulties; that the aid is proportionate; and that the conditions in this section and sections 3.11.4, 3.11.5, 3.11.6 and 3.11.7 are complied with.

### 3.11.3. Types of recapitalisation measures

52. Member States can provide COVID-19 recapitalisation measures using two distinct sets of recapitalisation instruments:

- (a) equity instruments, in particular, the issuance of new common or preferred shares; and/or
- (b) instruments with an equity component (referred to as 'hybrid capital instruments') <sup>(24)</sup>, in particular profit participation rights, silent participations and convertible secured or unsecured bonds.

53. The State intervention can take the form of any variation of the above instruments, or a combination of equity and hybrid capital instruments. Member States may also underwrite the above instruments in the context of a market offering, under the condition that any resulting State intervention in a beneficiary meets the conditions set out in this section 3.11 of the Communication. The Member State must ensure

<sup>(23)</sup> As defined in Article 2(18) of the 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 (OJ L 187, 26.6.2014, p. 1).

<sup>(24)</sup> Hybrid capital instruments are instruments that have characteristics of debt as well as of equity. For instance, convertible bonds are remunerated like bonds until they are converted into equity. The assessment of the overall remuneration of hybrid capital instruments thus depends on the one hand on their remuneration while they are debt-like instruments and on the other hand on the conditions for conversion into equity-like instruments.

that the selected recapitalisation instruments and the conditions attached thereto are appropriate to address the beneficiary's recapitalisation needs, while at the same time being the least distortive to competition.

#### 3.11.4. *Amount of the recapitalisation*

54. In order to ensure proportionality of the aid, the amount of the COVID-19 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 to the one predating the COVID-19 outbreak, i.e. the situation on 31 December 2019. In assessing the proportionality of the aid, State aid received or planned in the context of the COVID-19 outbreak shall be taken into account.

#### 3.11.5. *Remuneration and exit of the State*

##### General principles

55. The State shall receive appropriate remuneration for the investment. The closer the remuneration is to market terms, the lower the potential competition distortion caused by the State intervention.
56. The COVID-19 recapitalisation should be redeemed when the economy stabilises. The Commission considers it appropriate to give the beneficiary sufficient time to redeem the recapitalisation. The Member State must put a mechanism in place to gradually incentivise redemption.
57. The remuneration of the COVID-19 recapitalisation measure should be increased in order to converge with market prices to provide an incentive to the beneficiary and to the other shareholders to redeem the State recapitalisation measure and to minimise the risk of distortions of competition.
58. It follows that COVID-19 recapitalisation measures need to contain appropriate incentives for undertakings to redeem the recapitalisation and look for alternative capital when market conditions permit, by requiring a sufficiently high remuneration for the recapitalisation.
59. As an alternative to the remuneration methodologies set out below, Member States may notify schemes or individual measures where the remuneration methodology is adapted in accordance with the features and seniority of the capital instrument provided they overall lead to a similar outcome with regard to the incentive effects on the exit of the State and a similar overall impact on the State's remuneration.

##### Remuneration of equity instruments

60. A capital injection by the State, or an equivalent intervention, shall be conducted at a price that does not exceed the average share price of the beneficiary over the 15 days preceding the request for the capital injection. If the beneficiary is not a publicly listed company, an estimate of its market value should be established by an independent expert or by other proportionate means.
61. Any recapitalisation measure shall include a step-up mechanism increasing the remuneration of the State, to incentivise the beneficiary to buy back the State capital injections. This increase in remuneration can take the form of additional shares <sup>(25)</sup> granted to the State or other mechanisms, and should correspond to a minimum of 10 % increase in the remuneration of the State (for the participation resulting from the State's COVID-19 equity injection that has not been repaid), for each of the step-up steps:
- (a) Four years after the COVID-19 equity injection, if the State has not sold at least 40 percent of its equity participation resulting from the COVID-19 equity injection, the step-up mechanism will be activated.

<sup>(25)</sup> Additional shares can, for instance, be granted via the issuance of convertible bonds at the date of the recapitalisation, which will be converted into equity at the date of trigger of the step-up mechanism.

- (b) Six years after the COVID-19 equity injection, if the State has not sold in full its equity participation resulting from the State's COVID-19 equity injection, the step-up mechanism will again be activated <sup>(26)</sup>.

If the beneficiary is not a publicly listed company, Member States may decide to implement each of the two steps one year later, i.e. five years and seven years after granting of the COVID-19 equity injection, respectively.

62. The Commission may accept alternative mechanisms, provided they overall lead to a similar outcome with regard to the incentive effects on the exit of the State and a similar overall impact on the State's remuneration.
63. The beneficiary should, have at any time, the possibility to buy back the equity stake that the State has acquired. To ensure that the State receives appropriate remuneration for the investment, the buy-back price should be the higher amount of (i) the nominal investment by the State increased by an annual interest remuneration 200 basis points higher than presented in the table below <sup>(27)</sup>; or (ii) the market price at the moment of the buy-back.
64. As an alternative, the State may sell at any time its equity stake at market prices to purchasers other than the beneficiary. Such a sale requires, in principle, an open and non-discriminatory consultation of potential purchasers or a sale on the stock exchange. The State may give existing shareholders priority rights to buy at the price resulting from the public consultation.

#### Remuneration of hybrid capital instruments

65. The overall remuneration of hybrid capital instruments must adequately factor in the following elements:
- (a) the characteristics of the instrument chosen, including its level of subordination, risk and all modalities of payment;
  - (b) built-in incentives for exit (such as step-up and redemption clauses); and
  - (c) an appropriate benchmark interest rate.
66. The minimum remuneration of hybrid capital instruments until they are converted into equity-like instruments shall be at least equal to the base rate (1 year IBOR or equivalent as published by the Commission <sup>(28)</sup>), plus the premium as set out below.

#### Remuneration of hybrid capital instruments: 1-year IBOR +

Type of recipient	1st year	2 <sup>nd</sup> and 3 <sup>rd</sup> year	4 <sup>th</sup> and 5 <sup>th</sup> year	6 <sup>th</sup> and 7 <sup>th</sup> year	8 <sup>th</sup> year and after
SMEs	225 bps	325 bps	450 bps	600 bps	800 bps
Large enterprises	250 bps	350 bps	500 bps	700 bps	950 bps

67. The conversion of hybrid capital instruments into equity shall be conducted at 5 percent or more below TERP (Theoretical Ex-Rights Price) at the time of the conversion.
68. After conversion into equity, a step-up mechanism must be included to increase the remuneration of the State, to incentivise the beneficiaries to buy back the State capital injections. If the equity resulting from the State's COVID-19 intervention is still owned by the State two years after the conversion into equity the State shall receive an additional share of ownership of the beneficiary in addition to its remaining

<sup>(26)</sup> For instance, if the step-up takes the form of the grant to the State of additional shares. If the State's participation in a beneficiary is 40 % as a result of its capital injection, and if the State does not sell its participation before the requested date, the State's participation should increase by at least  $0,1 \times 40 \% = 4 \%$  to reach 44 % four years after the COVID-19 equity injection, and to reach 48 % six years after COVID-19 equity injection, resulting in a corresponding dilution of the stakes of other shareholders.

<sup>(27)</sup> The 200 bps increase does not apply in year 8 and onwards.

<sup>(28)</sup> Base rates calculated in accordance with the Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6), published on the website of DG Competition at [https://ec.europa.eu/competition/state\\_aid/legislation/reference\\_rates.html](https://ec.europa.eu/competition/state_aid/legislation/reference_rates.html)

participation resulting from the State's conversion of the COVID-19 hybrid capital instruments. This additional share of ownership shall be at a minimum 10 percent of the remaining participation resulting from the State's conversion of the COVID-19 hybrid capital instruments. The Commission may accept alternative step-up mechanisms provided they have the same incentive effect and a similar overall impact on the State's remuneration.

69. Member States may choose a pricing formula that includes additional step-up or payback clauses. Such features should be designed so that they encourage an early end to the State's recapitalisation support of the beneficiary. The Commission may also accept alternative pricing methodologies, provided they lead to remunerations that are higher than or similar to those resulting from the above methodology.
70. Since the nature of hybrid instruments varies significantly, the Commission does not provide guidance for all types of instruments. Hybrid instruments shall in any event follow the principles mentioned above, with remuneration reflecting the risk of the particular instruments.

#### 3.11.6. *Governance and prevention of undue distortions of competition*

71. In order to prevent undue distortions of competition beneficiaries must not engage in aggressive commercial expansion financed by State aid or beneficiaries taking excessive risks. As a general principle, the smaller the equity stake of the Member State and the higher the remuneration, the less there is a need for safeguards.
72. If the beneficiary of a COVID-19 recapitalisation measure above EUR 250 million is an undertaking with significant market power on at least one of the relevant markets in which it operates, Member States must propose additional measures to preserve effective competition in those markets. In proposing such measures, Member States may in particular offer structural or behavioural commitments foreseen in Commission Notice on remedies acceptable under the Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004.
73. Beneficiaries receiving a COVID-19 recapitalisation measures are prohibited from advertising it for commercial purposes.
74. As long as at least 75 % of the COVID-19 recapitalisation measures have not been redeemed, beneficiaries other than SMEs shall be prevented from acquiring a more than 10 % stake in competitors or other operators in the same line of business, including upstream and downstream operations.
75. In exceptional circumstances, and without prejudice to merger control, such beneficiaries may acquire a more than 10 % stake in operators upstream or downstream in their area of operation, only if the acquisition is necessary to maintain the beneficiary's viability. The Commission may authorise the acquisition if it is necessary to maintain the beneficiary's viability. The acquisition may not be implemented before the Commission has taken a decision on this issue.
76. State aid shall not be used to cross-subsidise economic activities of integrated undertakings that were in economic difficulties already on 31 December 2019. A clear account separation shall be put in place in integrated companies to ensure that the recapitalisation measure does not benefit those activities.
77. As long as the COVID-19 recapitalisation measures have not been fully redeemed, beneficiaries cannot make dividend payments, nor non-mandatory coupon payments, nor buy back shares, other than in relation to the State.

78. As long as at least 75 % of the COVID-19 recapitalisation measures has not been redeemed, the remuneration of each member of the beneficiaries' management must not go beyond the fixed part of his/her remuneration on 31 December 2019. For persons becoming members of the management on or after the recapitalisation, the applicable limit is the lowest fixed remuneration of any of the members of the management on 31 December 2019. Under no circumstances, bonuses, other variable or comparable remuneration elements shall be paid.
- 3.11.7. *Exit strategy of the State from the participation resulting from the recapitalisation and reporting obligations*
79. Beneficiaries other than SMEs that have received a COVID-19 recapitalisation of more than 25 % of equity at the moment of intervention must demonstrate a credible exit strategy for the participation of the Member State, unless the State's intervention is reduced below the level of 25 % of equity within 12 months from the date of the granting of the aid <sup>(29)</sup>.
80. The exit strategy shall lay out:
- (a) the plan of the beneficiary on the continuation of its activity and the use of the funds invested by the State, including a payment schedule of the remuneration and of the redemption of the State investment (together 'the repayment schedule'); and
  - (b) the measures that the beneficiary and the State will take to abide by the repayment schedule.
81. The exit strategy should be prepared and submitted to the Member State within 12 months after aid is granted and must to be endorsed by the Member State.
82. Beyond the obligation set out in points 79 to 81, beneficiaries must report to the Member State on the progress in the implementation of the repayment schedule and the compliance with the conditions in section 3.11.6 within 12 months of the schedule's presentation, and thereafter periodically every 12 months.
83. As long as the COVID-19 recapitalisation measures has not been fully redeemed, beneficiaries of a COVID-19 recapitalisation, other than SMEs, shall, within 12 months from the date of the granting of the aid and thereafter periodically every 12 months, publish information on the use of the aid received. In particular, this should include information on how their use of the aid received supports their activities in line with EU objectives and national obligations linked to the green and digital transformation, including the EU objective of climate neutrality by 2050.
84. The Member State should report to the Commission annually on the implementation of the repayment schedule and compliance with the conditions in section 3.11.6. Where the beneficiary received a COVID-19 recapitalisation above EUR 250 million, the report shall include information on compliance with the conditions set in point 54.
85. If six years after the COVID-19 recapitalisation the State's intervention has not been reduced below 15 % of beneficiary's equity, a restructuring plan in accordance with the Rescue and Restructuring Guidelines must be notified to the Commission for approval. The Commission will assess whether the actions contemplated in the restructuring plan ensure the beneficiary's viability, also with a view of EU objectives and national obligations linked to the green and digital transformation, and the exit of the State without adversely affecting trade to an extent contrary to the common interest. If the beneficiary is not a publicly listed company, or is an SME, the Member State may decide to notify a restructuring plan only if the State's intervention has not been reduced below the level of 15 % of equity seven years after the COVID-19 recapitalisation.'

<sup>(29)</sup> For the purpose of this subsection 3.11.7, hybrid instruments granted by the State should be counted as equity.



38. Point 44 is renumbered as point 86 and is amended as follows:
- ‘86. Except aid granted under sections 3.9, 3.10 and 3.11, Member States must publish relevant information <sup>(30)</sup> on each individual aid granted under this Communication on the comprehensive State aid website or Commission’s IT tool <sup>(31)</sup> within 12 months from the moment of granting. Member States must publish relevant information <sup>(32)</sup> on each individual recapitalisation granted under section 3.11 on the comprehensive State aid website or Commission’s IT tool within 3 months from the moment of the recapitalisation. The nominal value of the recapitalisation shall be included per beneficiary.’
39. Points 45-52 are renumbered as points 87-94.
40. Point 49 is renumbered as point 91 and is replaced by the following:
- ‘91. The Commission applies this Communication from 19 March 2020, having regard to the economic impact of the COVID-19 outbreak, which required immediate action. This Communication is justified by the current exceptional circumstances and will not be applied after 31 December 2020, except for section 3.11, which will be applied until 1 July 2021. The Commission may review this Communication before 31 December 2020 on the basis of important competition policy or economic considerations. Where helpful, the Commission may also provide further clarifications on its approach to particular issues.’
- 

<sup>(30)</sup> Referring to information required in Annex III of the Commission Regulation (EU) No 651/2014 of 17 June 2014 and of Annex III of the Commission Regulation (EU) No 702/2014 and Annex III of the Commission Regulation (EU) No 1388/2014 of 16 December 2014. For repayable advances, guarantees, loans, subordinated loans and other forms the nominal value of the underlying instrument shall be inserted per beneficiary. For tax and payment advantages, the aid amount of the individual aid may be indicated in ranges.

<sup>(31)</sup> The state aid transparency public search gives access to state aid individual award data provided by Member States in compliance with the European transparency requirements for state aid and can be found at <https://webgate.ec.europa.eu/competition/transparency/public?lang=en>.

<sup>(32)</sup> Referring to information required in Annex III of the Commission Regulation (EU) No 651/2014 of 17 June 2014 and of Annex III of the Commission Regulation (EU) No 702/2014 and Annex III of the Commission Regulation (EU) No 1388/2014 of 16 December 2014.