Client Alert

State aid in response to the COVID-19 crisis

State aid may be one way of mitigating the negative economic impact of the COVID-19 pandemic. The European Commission ("**Commission**") has recognized this in its response to COVID-19 which addresses the state aid aspects of crisis management measures further to which it published a temporary framework ("**Framework**") on March 19, 2020. Nonetheless, provisions on general state aid and *de minimis* aid remain applicable which means that if the aid is equally applicable to all undertakings or does not trigger a minimum threshold, it is not required to notify the Commission contrary to the aid schemes described hereunder. Below is a brief summary of the temporary regulations.

1 Aid schemes envisaged by the Framework – aid provided to remedy serious economic disruptions

In addition to the already available aid schemes, the Framework will enable member states to introduce five further measures aimed at countering serious economic disruption. The aids may be granted no later than December 31, 2020 to undertakings that were not in difficulty on December 31, 2019 but faced difficulties as a result of the COVID-19 crisis.

1.1 Aid by direct grants, repayable advances or tax advantages

The Commission will consider aid measures compatible with the internal market if the amount of aid does not exceed €800.000 per undertaking, and the aid is granted on the basis of a scheme with an estimated budget.

Different requirements apply to fisheries and various agricultural sectors (e.g. the amount of aid cannot exceed €100,000-120,000 per undertaking depending on the particular sector).

1.2 Aid through state guarantees on bank loans

The Framework sets out the minimum guarantee premiums depending on the type of recipient (i.e. SME or large undertaking), and the duration of the guarantee which is limited to a maximum of 6 years. The guarantee may cover 90 percent of the loan principal and relate to both investment and working capital loans.

1.3 Aid through subsidized interest rates for loans

Member states may provide aid through subsidized interest rates that are at least equal to the base rate applicable on January 1, 2020 plus credit risk premiums applied by member states/financial institutions. The duration of the loan agreements is limited to a maximum of 6 years and the amount of the loan shall be proportionate. The aid through subsidized interest rates cannot be cumulative, that is, for the same loan principal with the aid granted under section 1.2.

1.4 Liquidity aid for undertakings through banks or other financial intermediaries

The aid schemes under section 1.2 and 1.3 may be provided to the undertakings directly or through credit institutions. In the latter case, the Framework gives guidance on how to ensure minimal distortion of competition between banks.

1.5 Short-term export credit insurance

The Framework provides additional flexibility to demonstrate evidence regarding the unavailability of cover for the risks in the private insurance market, therefore a member state may be more likely to justify enabling short-term export credit insurance.

The aid schemes are subject to obligatory notification. The Commission has already provided templates to facilitate the approval process.

2 Further state aid measures with notification requirement

2.1 Rescue aid and liquidity support

Rescue aid may be provided to undertakings that face or may in the future face difficulties with loans or loan guarantees, subject to the Commission's prior individual approval. Such aid may cover the financing needs of undertakings for 6 months, with the provision that undertakings that already received such support in the past 10 years will not be eligible for further aid under such title. However, in view of the current exceptional situation, the Commission is ready to accept exceptions to that rule in individual cases.

Furthermore, liquidity support ensuring the viability of smaller state-owned companies and SMEs through various support schemes for a period of up to 18 months is also subject to the Commission's approval. The Commission is ready to bear the additional financial burden resulting from the reorganization of state aid schemes, and to ensure the fast approval of notifications.

2.2 Compensation for damages caused by exceptional occurrences

If undertakings incur losses caused by exceptional occurrences, the member state concerned may notify the Commission about its intention to compensate the damage suffered by the undertakings concerned. The Commission recognizes the outbreak of COVID-19 as an "exceptional occurrence", therefore, such compensatory measures may even be applied in specific, targeted sectors. Thus, the Commission may approve not only individual but also sectoral aid schemes (e.g. airlines, tourism and hospitality). In the current situation, the Commission has already approved such a compensation scheme in Denmark, whereby Denmark may compensate affected undertakings for their losses due to the cancellation of public events.

It should be noted that recognition of COVID-19 as an exceptional occurrence does not automatically trigger approval of public aid schemes, but only provides a legal basis and justification for the approval of subsidies that do not unduly restrict competition.

Summary

The Commission does not seem to be planning fundamental amendments to state aid rules, but its response to the current crisis is expected to lead to a significant increase in the volume of approved state aid schemes. While the Framework provides guidance on the opportunities available to undertakings in the joint efforts to minimize the economic fallout, loosening the "one time, last time" principle could definitely help some undertakings that are in difficulty.

Should you have any questions regarding the issues raised in this newsletter or relating to competition law, please do not hesitate to contact us.

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