GIBSON DUNN

European Commission Authorisation of State Aid to Support the Economy Amid the Current COVID-19 Outbreak

Client Alert | March 27, 2020

As already described in Gibson Dunn's client alert of 20 March 2020, the European Commission (***Commission***) has announced that it will authorize the grant of State aid to the real economy for liquidity shortages and financial losses resulting from the COVID-19 outbreak in at least two ways.

First, the Temporary Framework adopted by the Commission on 20 March based on Article 107(3)(b) TFEU for remedying a serious disturbance in the economies of the Member States authorizes the grant of liquidity support to companies that have faced financial difficulties after 31 December 2019 due to the COVID-19 outbreak. Second, the Commission has pledged to authorize State aid directly on the basis of TFEU Article 107(2)(b) allowing aid to be granted for damages of an exceptional occurrence, such as the COVID-19 outbreak.

The Temporary Framework

Recapping the conditions for the authorization of aid under the Framework, aid may be granted for **liquidity support** under the Framework in four ways.

First, up to EUR 800.000 may be granted to a single company in the form of a lump sum, a repayable advance (*i.e.,* loans with reimbursement terms that depend on the outcome of the loan project) or tax advantages. **Second**, aid may be granted to SMEs and large enterprises in the form of below-market rate premiums for State guarantees covering loans of 1-6 years provided that the amounts do not exceed a fixed percent of the company's capital. **Third**, aid may be granted in the form of below-market interest rates, provided that the reduced interest rates are at least equal to the base rate (1 year IBOR or equivalent) applicable on 1 January 2020 plus the credit risk margins defined in the Temporary Framework. It should be noted that the aid provided in the form of below-market rate premiums for State guarantees and below-market rate interests for loans may also be granted through banks (or other financial institutions) provided that safeguards are put in place ensuring that the banks do not receive too much of a residual benefit (in the form of an expanded customer base or expanded business with one customer). **Finally**, aid may be granted for marketable risks through credit-export insurance provided there is evidence of the unavailability of private insurance coverage.

By 25 March,the Commission had already approved ten aid schemes under the Temporary Framework of which at least five were approved within 48 hours from their notification. Within the next weeks further notifications are expected to cover aid for transport, tourism, culture, hospitality and retail. The following schemes have been already approved:

- On 21 March 2020, the Commission approved a **Danish scheme** to issue guarantees covering loans to SMEs with the Danish State covering up to 70% of

Related People

Yannis Ioannidis

the risk.

- On the same day, the Commission approved three **French schemes** of which two authorize a French public investment bank (Bpifrance) to provide State guarantees for loans and credit lines to enterprises with up to 5,000 employees, while the third allows for the grant of State guarantees by banks for new loans to all types of companies.
- Also on 21 March the Commission also authorized two **German schemes** under which the German bank, Kreditanstalt für Wiederaufbau (***KfW***) may cover up to 90% of the risk for 5-year loans of up to EUR 1 billion per company and KfW may, together with private banks, issue loans with the State covering up to 80% of the risk, (provided that the loan does not cover more than 50% of the company's total existing debt).
- On 22 March, the Commission approved four **Portuguese schemes** to grant guarantees for loans obtained by SMEs active in tourism, restaurants, travel agencies, tourist entertainment, event organizing, and the extractive & manufacturing industry. It also approved an **Italian aid scheme** to grant lump sums of up to EUR 800.000 to companies for the production and supply of medical protection equipment (e.g., masks, goggles, gowns, and safety suits).
- On 23 March, the Commission also approved two **Latvian schemes** for the grant of reduced interest loans and guarantees covering a value of more than EUR 200 million with the Latvian State covering up to 50% of the risk.
- On 24 March the Commission approved a **Luxembourg scheme** to channel aid to companies and liberal professions in the form of repayable advances of up to EUR 500.000 per entity. It also approved **two further German schemes** authorizing banks and authorities to issue low interest/premium 6-year loans and 9-month guarantees as well as lump sums, repayable advances and tax advantages for a maximum of (i) EUR 100.000-120.000 to companies in the fisheries, aquaculture sectors and primary agriculture production; and (ii) EUR 800.000 to companies in other sectors. On the same day, the Commission also authorized **two Spanish schemes** for the issuance of guarantees to cover loans to self-employed workers, SMEs and large companies where the State may guarantee up to 80% of the risk for self-employed workers and SMEs and up to 70% of the risk for larger companies.
- Finally, on 25 March, the Commission approved **two UK schemes** authorizing the British Business Bank to grant loan guarantees to SMEs in all sectors with a turnover of up to GBP 45 million; and authorities to grant lump sums of up to EUR 800.000 to SMEs.

Aid Authorized Directly under the Treaty

While the Temporary Framework covers liquidity needs, the Commission has already stated that it will consider COVID-19 as an "exceptional occurrence" under Article 107(2)(b) TFEU for which aid may be authorized to cover **damages**.

While the Temporary Framework and Article 107(2) are platforms for authorizing State aid that overlap somewhat, one legal difference is that the Temporary Framework covers liquidity support (relating to a lack of cash flows) while Article 107(2)(b) only covers damages (relating to evidenced past/future losses). However, given the uncertainties surrounding the duration and the impact of the COVID-19 outbreak, in practice this difference is rather a question of how the funding shortage is presented. The most practical difference appears to be the fact that aid authorized under the Temporary Framework is more limited in amount whereas in principle unlimited funding may be authorized under Article 107(2)(b). This is also confirmed by the fact that under the Temporary Framework it is, in principle, only possible to authorize aid schemes (providing for the grant of aid to several companies based on the same conditions) as opposed to under Article 107(2)(b) where stand-alone grants may also be authorized.

With that in mind the real question is which sectors may benefit from TFEU 107(2)(b) and how the Commission will ensure a non-discriminatory implementation of this provision. It is very likely that the transport sector (in particular aviation) will be entitled to receive aid by relying directly on TFEU Article 107(2)(b), both due to their massive funding needs and the Commisison's view that the future competitiveness of the aviation and rail markets depend on maintaining the presence of many (smaller) operators which provide for competitive price pressure. While the maritime sector is in a different situation, the Commission is also likely to rely on Article 107(2)(b) to authorize aid to this sector due to the sheer amounts that will be required for keeping this sector afloat. However, it begs the question of whether the manufacturing industries and other industries also will be considered eligible for aid under Article 107(2)(b), since it is just a question of time before their significant losses will be publicly known.

*** * ***

We are at your disposal for advice on how a company may benefit from any type of support in the EU and on how to act against competitors which may be receiving support that does not comply with State aid rules in the context of COVID-19.

Gibson Dunn's lawyers are available to assist with any questions you may have regarding developments related to the COVID-19 outbreak. For additional information, please contact any member of the firm's Coronavirus (COVID-19) Response Team.

The following Gibson Dunn lawyers prepared this client update: Lena Sandberg, Yannis Ioannidis and Pilar Pérez-D'Ocon. Gibson Dunn lawyers regularly counsel clients on the issues raised by this pandemic, and we are working with many of our clients on their response to COVID-19. Please also feel free to contact the Gibson Dunn lawyer with whom you usually work, the authors, or any member of the firm's **Antitrust and Competition Practice Group**:

Antitrust and Competition Group:

Brussels
Peter Alexiadis (+32 2 554 7200, palexiadis@gibsondunn.com)
Attila Borsos (+32 2 554 72 11, aborsos@gibsondunn.com)
Jens-Olrik Murach (+32 2 554 7240, jmurach@gibsondunn.com)
Christian Riis-Madsen (+32 2 554 72 05, criis@gibsondunn.com)
Lena Sandberg (+32 2 554 72 60, lsandberg@gibsondunn.com)
David Wood (+32 2 554 7210, dwood@gibsondunn.com)

Munich
Michael Walther (+49 89 189 33 180, mwalther@gibsondunn.com)
Kai Gesing (+49 89 189 33 180, kgesing@gibsondunn.com)

London
Patrick Doris (+44 20 7071 4276, pdoris@gibsondunn.com)
Charles Falconer (+44 20 7071 4270, cfalconer@gibsondunn.com)
Ali Nikpay (+44 20 7071 4273, anikpay@gibsondunn.com)
Philip Rocher (+44 20 7071 4202, procher@gibsondunn.com)
Deirdre Taylor (+44 20 7071 4274, dtaylor2@gibsondunn.com)

Hong Kong
Kelly Austin *(*+852 2214 3788, kaustin@gibsondunn.com)
Sébastien Evrard (+852 2214 3798, sevrard@gibsondunn.com)

Washington, D.C.
D. Jarrett Arp (+1 202-955-8678, jarp@gibsondunn.com)

Adam Di Vincenzo (+1 202-887-3704, adivincenzo@gibsondunn.com)
Scott D. Hammond (+1 202-887-3684, shammond@gibsondunn.com)
Kristen C. Limarzi (+1 202-887-3518, klimarzi@gibsondunn.com)
Joshua Lipton (+1 202-955-8226, jlipton@gibsondunn.com)
Richard G. Parker (+1 202-955-8503, rparker@gibsondunn.com)
Cynthia Richman (+1 202-955-8234, crichman@gibsondunn.com)
Jeremy Robison (+1 202-955-8518, wrobison@gibsondunn.com)
Andrew Cline (+1 202-887-3698, acline@gibsondunn.com)

New York
Eric J. Stock (+1 212-351-2301, estock@gibsondunn.com)

Los Angeles
Daniel G. Swanson (+1 213-229-7430, dswanson@gibsondunn.com)
Christopher D. Dusseault (+1 213-229-7855, cdusseault@gibsondunn.com)
Samuel G. Liversidge (+1 213-229-7420, sliversidge@gibsondunn.com)
Jay P. Srinivasan (+1 213-229-7296, jsrinivasan@gibsondunn.com)
Rod J. Stone (+1 213-229-7256, rstone@gibsondunn.com)

San Francisco
Rachel S. Brass (+1 415-393-8293, rbrass@gibsondunn.com)

Dallas
Veronica S. Lewis (+1 214-698-3320, vlewis@gibsondunn.com)
Mike Raiff (+1 214-698-3350, mraiff@gibsondunn.com)
Brian Robison (+1 214-698-3370, brobison@gibsondunn.com)
Robert C. Walters (+1 214-698-3114, rwalters@gibsondunn.com)

Related Capabilities

Antitrust and Competition