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State aid regime during COVID-19

by **Marco Hickey**

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An Irish State aid scheme of €200 million for supporting businesses affected by the COVID-19 crisis has recently been approved by the European Commission (the Commission). We examine these measures below, along with an overview of general State aid principles and the Temporary Framework for State Aid (Temporary Framework) recently adopted by the Commission in response to the COVID-19 crisis.

State aid overview

State aid is an advantage in any form conferred on a selective basis to undertakings by public authorities of the Member States. Aid can take many forms, such as direct grants, loans, guarantees, direct investment in the capital of companies and benefits in kind. The rules on State aid are set out in Articles 107-109 of the Treaty on the Functioning of the European Union (TFEU) and seek to ensure that there is no distortion of competition within the internal market.

For a measure to constitute State aid, each of the following five conditions need to be clearly established:

- an advantage must be given;

- the advantage must be granted by a Member State or through State resources;

- the advantage must favour certain undertakings i.e. the advantage must be selective;

- the advantage must distort competition; and

- the advantage must affect trade between Member States.

There are certain exemptions to the rules, and Article 107(2) TFEU sets out a limited list of the types of aid which are automatically deemed compatible with the internal market.

Under Article 107(3) TFEU, there are five categories of aid that may be deemed compatible by the Commission, and of particular relevance is Article 107(3)(b) TFEU which allows the granting of aid to remedy a serious disturbance in the economy. Where aid may be deemed compatible, the Commission must be notified of the proposed aid measures, or such measures must come within the ambit of a pre-approved block exemption by the Commission.

Temporary Framework for State aid

The Temporary Framework adopted on 19 March 2020 by the Commission remains in place until 31 December 2020 and is pursuant to Article 107(3)(b) TEFU, with the objective of assisting businesses and sectors of the economy most affected by the COVID-19 outbreak. It sets out the measures under which the Commission will temporarily consider State aid measures to be compatible with the TFEU.

Measures adopted under the Temporary Framework are not automatically exempt from State aid rules. Member States must still notify proposed measures to the Commission, and measures meeting the conditions of the Temporary Framework will be approved rapidly by the Commission.

Two common goals of the Temporary Framework

The two common goals of the Temporary Framework are: (i) that businesses have the liquidity to keep operating, or to put a temporary freeze on their activities, if necessary, and that support reaches the businesses that need it; and (ii) that support for businesses in one Member State does not undermine European unity during a crisis, because Member States have to be able to rely on the internal/single market to help the European economy weather the outbreak and recover going forward.

Types of aid that can be granted under the Temporary Framework

At the time of writing, the types of aid that can be granted by Member States under the Temporary Framework before 31 December 2020 are set out below. It is likely that as the COVID-19 situation evolves that the Temporary Framework may be extended to cover other forms of support.

1. Direct grants, selective tax advantages and advance payments of up to €800,000 per company for its urgent liquidity needs.
2. State guarantees on investment or working capital loans, with a maximum guarantee duration of six years.
3. Subsidised public loans to companies with favourable interest rates to help businesses cover immediate working capital and investment needs.
4. Safeguards for banks to channel aid to SMEs in particular. Aid to banks to support businesses is considered to be direct aid to the banks' customers and not the banks themselves. The Temporary Framework gives guidance on how Member States can ensure that minimal distortion of competition between banks arise.
5. Short-term export credit insurance where required.
6. Support for coronavirus related research and development in the form of direct grants, repayable advances or tax advantages for coronavirus and other relevant antiviral R&D.
7. Support for the construction and upgrading of testing facilities in the form of direct grants, tax advantages, repayable advances and no-loss guarantees.
8. Support for the production of products relevant to tackle the coronavirus outbreak in the form of direct grants, tax advantages, repayable advances and no-loss guarantees.
9. Targeted support in the form of deferral of tax payments and/ or suspensions of social security contributions to preserve employment and reduce liquidity.
10. Targeted support in the form of wage subsidies for employees, allowing Member States to contribute to the wage costs of businesses suffering the most from COVID-19, who would otherwise have had to lay off employees.

Irish State aid scheme under the Temporary Framework

The approval by the Commission of the €200 million Irish State aid scheme on 31 March 2020 follows similar State Aid approvals for numerous EU Member States during the COVID-19 crisis. Ireland notified the Commission, who in turn approved the Irish State aid scheme under the Temporary Framework and pursuant to Article 107(3)(b) TFEU.

The support available under the Irish scheme is in the form of repayable advances and is accessible to companies that:

- experience or expect to experience a decline in turnover of at least 15% compared to their revenue before the COVID-19 outbreak in Ireland;

- employ 10 or more full-time employees; and

- are in certain manufacturing sectors and/or internationally traded sectors.

Comment

The evolving nature of the crisis means that it is likely that we will see further amendments and measures introduced under the Temporary Framework to assist businesses in combating the COVID-19 crisis.

State aid is an important means of addressing the challenges presented by the COVID-19 crisis, and the measures approved by the Commission to mitigate the socio-economic impact of the COVID-19 outbreak are to be welcomed.

For more information please contact Marco Hickey, Partner, EU, Competition and Regulated Markets, at mhickey@lkshields.ie.

About the Author

Marco Hickey
Partner

Marco is a highly experienced competition and M&A/corporate lawyer having practiced in both areas for many years.
T: + 353 1 637 1522 **E:** mhickey@lkshields.ie