Temporary Frameworks to support the economy in the context of the coronavirus outbreak and Ukraine crisis

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MAIN LEGAL BASES TO IMPLEMENT AID IN COVID & UKRAINE CONTEXT

4 main legal bases possible:

- General measures that do not constitute state aid (i.e. deferral of payments of VAT or social contributions for all undertakings in a MS)
  - Non selective aids
- 107.2.b - aid to make good damage caused by extraordinary events
  - Without prior analysis
- Article 107.3.b - aid to remedy a serious disturbance in the economy of a MS
  - With prior analysis of the Commission
- 107.3.c - aid to facilitate the development of certain economic activities

Most frequent Legal base used
The notion of an undertaking in difficulty

Definition in Article 2.18 of the GBER 17 June 2014 n°651/2014

A firm is in difficulty when one of the following circumstances applies:

1) When more than 50% of its capital has disappeared
2) When company is subject to collective insolvency proceedings or eligible for such proceedings
3) Undertaking that has received rescue aid and has not yet reimbursed the loan or has received restructuring aid and is still subject to a restructuring plan
4) Non SME undertaking that meets these 2 criteria for 2 years
   - the undertaking's book debt to equity ratio is greater than 7,5 and
   - the undertaking's EBITDA interest coverage ratio is below 1,0.
Aid to undertakings in difficulty before Covid crisis

Several possibilities:

- **Use “de minimis” regulations (except SGEI DM Rg):**
  - General de minimis regulation 1407/2013 extended until end of 2023 by amending regulation 2020/972
  - Fishery and aquaculture de minimis regulation 717/2014
  - Agriculture de minimis regulation 2019/2014
- **Use GBER exempted aid scheme for startups or natural disasters**
- **Notify to EC aid scheme based on the Guidelines on State aid for rescuing and restructuring undertakings in difficulty (OJEU 31/07/2014)**
  - Rescuing aid – emergency aid during the first 6 months (debt only)
  - Restructuring aid – long term aid after restructuring plan up to 10 years (all forms of aid)

All these possibilities still apply during Covid 19 crisis... and after
2008 temporary framework

Sub-prime financial crisis context:
- After December 2008 European Council decision
- Obligation of prior notification of aid to the commission
- Companies shall not be in difficulty on 1 July 2008
- Legal basis: Article 107.3.b

6 aid measures:
- Limited amount of aid - 500 k€ (de minimis temporary extension) modified in the 2020 framework
- Reduction of guarantee premiums modified in the 2020 framework
- Subsidised loans modified in the 2020 framework
- Subsidised loans for companies producing green products
- Private equity investments with thresholds increased modified in the 2020 framework
- Aid for short-term export credit insurance modified in the 2020 framework
2020 temporary framework (1)

- Covid crisis context in early 2020
- 6 communications adopted by the commission in 8 months
- 1° Amendment of the temporary framework Com. 3 April 2020
- 2° Amendment of the temporary framework Com. 13 May 2020
- 3° Amendment of the temporary framework Com. of 29 June 2020
- 4° Amendment of the temporary framework com. of 13 October 2020
- 5° Amendment of the temporary framework com. of 28 January 2021
- 6° Amendment of the temporary framework com of 24 November 2021
  - Extension of the term of the framework until 30 June 2022
- Globally the same construction as the 2008 framework
- No exemption - obligation to notify aid schemes to EC
- 14 categories of aid that States may use by notification procedure
- More than 1300 EC decisions on Covid state aid since 12 March
- Ex: about 50 decisions adopting aid schemes in France
2020 temporary framework (2)

- The possibilities offered by the modified framework introduced by the First, Second, Third, Fourth, fifth, and Sixth Communications - no new aid in the fourth communication (amendments)
- Limited Amount of aid (Measure 3.1)
- Public guarantees on loans (Measure 3.2)
- Subsidised interest rates for loans (Measure 3.3)
- Loans and guarantees channelled through financial institutions (Measure 3.4)
- Short-term export credit insurance (Measure 3.5)
- Aid for R&D projects linked to Covid-19 (Measure 3.6)
- Investment aid for testing and upscaling infrastructure (Measure 3.7)
- Investment Aid for production of Covid-19-relevant products (Measure 3.8)
- Aid in form of deferral of taxes and contributions (Measure 3.9)
- Aid in form of wage subsidies for employees to avoid lay-offs (Measure 3.10)
- Recapitalisation measures (Measure 3.11)
- Aid in the form of support for uncovered fixed costs (Measure 3.12)
- Investment support towards a sustainable recovery (Measure 3.13)
- Solvency support (Measure 3.14)

- Until June 30, 2022
- Until December 31, 2022
- Until December 31, 2023
2020 temporary framework (3)

Reporting and monitoring:

- Information on individual aids above:
  - 100 k€ (general sectors)
  - or 10 k€ (agriculture and fisheries sectors)
- Shall be published on Transparency Award Module (TAM) within 12 months after from the moment of granting
- MS must submit annual reports to the Commission for each aid scheme approved
- MS must maintain for 10 years detailed records regarding aid provided
Main measures that can be cofinanced in ESI Funds programs:

- Limited Amount of aid (Measure 3.1)
- Public guarantees on loans (Measure 3.2)
- Subsidised interest rates for loans (Measure 3.3)
- Aid for R&D projects linked to Covid-19 (Measure 3.6)
- Investment aid for testing and upscaling infrastructure (Measure 3.7)
- Investment Aid for production of Covid 19-relevant products (Measure 3.8)
- Aid to fixed costs of companies that are not covered by their revenues (Measure 3.12)
Limited amount of aid (3.1)

Beneficiaries:
- Undertakings in difficulty except Medium and Large undertakings already in difficulty on 31/12/2019
- Healthy companies also eligible (written in the first communication - confirmed by DG COMP)
- Mainly intended to help companies with cash flow needs due to the Covid crisis
- BUT Aid is not limited to firms in difficulty with liquidity needs due to Covid crisis (confirm DG Comp)
- Aid granted by 30.06.2022

Amount of aid:
- Total aid up to 2,3 M€ (general case)
- Total aid up to 290 k€ (agricultural production)
- Total aid up to 345 k€ (fisheries and aquaculture)

No eligible costs – no incentive effect – no rates – no sectors excluded

Forms of aid:
- Direct grants, tax and payment advantages or other forms such as repayable advances, guarantees, loans and equity repayable advances, loans, guarantees: No NGE calculation.
- The total of the loan, guarantee, or equity intervention must be < or = the ceiling amount.

Limited Amount of Aid is not De Minimis Aid
Previous De minimis Aid shall not be included in 2,3 M€ (except on same eligible costs)
Guarantees on loans (3.2)

- Guarantees for investment credits or working capital needs

**Beneficiaries:**

- Undertakings in difficulty except Medium and Large undertakings already in difficulty on 31/12/2019
- Healthy companies also eligible

**Guaranteed amount:**

- 90% of the loans if identical State/Bank loss sharing
- 35% of the loans if losses are charged to the State in priority

**Duration of the guarantee:**

- Guarantees granted until 30/06/2022 - Duration: max 6 years (duration can be modulated)

**Amount of guarantees:**

- Capped at double annual wage bill - or capped at 25% of 2019 turnover
- Or capped at 18 months liquidity needs (SME) or 12 months liquidity needs (LE)
- Or for loans maturing on 31/12/2020 highest amounts possible with appropriate justification

**Guarantee premiums:**

- Undertakings must pay the following Time-progressive premiums

<table>
<thead>
<tr>
<th>UNDERTAKINGS SIZE</th>
<th>YEAR 1</th>
<th>YEARS 2 - 3</th>
<th>YEARS 4 - 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>SME</td>
<td>0,25%</td>
<td>0,50%</td>
<td>1,00%</td>
</tr>
<tr>
<td>LARGE ENTERPRISE</td>
<td>0,50%</td>
<td>1,00%</td>
<td>2,00%</td>
</tr>
</tbody>
</table>
Public loans (3.3)

- Loans for investment credits or working capital needs

**Beneficiaries:**
- Undertakings in difficulty **except** Medium and Large undertakings already in difficulty on 31/12/2019 - Healthy companies also eligible

**Duration of the loan:**
- Loans granted until 30/06/2022 - Duration: max 6 years (duration can be modulated)

**Amount of loans:**
- Capped at double annual wage bill - or capped at **25%** of 2019 turnover
- Or capped at 18 months liquidity needs (SME) or 12 months liquidity needs (LE)
- Or for loans maturing on **31/12/2020** highest amounts possible with appropriate justification

**Interest rates:**
- 1\textsuperscript{st} January 2020 Base rates + margin
- Base rate = -0.45 for MS in Euro zone
- Plus following credit risk margins

<table>
<thead>
<tr>
<th>CREDIT RISK MARGIN</th>
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<tr>
<td><strong>UNDERTAKING SIZE</strong></td>
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<tr>
<td>LARGE ENTERPRISE</td>
</tr>
</tbody>
</table>
Aid for COVID 19 relevant R&D (3.6)

Beneficiaries:
- Undertakings in difficulty except Medium and Large undertakings already in difficulty on 31/12/2019 - Healthy companies also eligible

Incentive effect:
- Projects started as of 1.2.2020 no incentive effect needed
- Projects started before 1.2.2020 aid shall be necessary to accelerate or widen the scope of the project

Forms of aid:
- Direct grants, repayable advances or tax advantages – aid granted by 30.06.2022

Eligible costs:
- Projects started as of 1.2.2020: all R&D costs (investment costs, operation costs, external costs)
- Projects started before 1.2.2020: only additional costs in relation to the acceleration efforts or the widened scope shall be eligible

Aid intensity:
- 100% for fundamental research projects
- 80% for industrial research and experimental development projects
- BONUS 15 pts if 2 MS in the project or in case of cross-border collaboration
**Investment aid for testing & upscaling infrastructure (3.7)**

- For 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, treatments, material, medical devices, hospital & medical equipment etc.

**Beneficiaries:**

- Undertakings in difficulty except Medium and Large undertakings already in difficulty on 31/12/2019 - Healthy companies also eligible

**Incentive effect:**

- Projects started as of 1.2.2020 no incentive effect needed
- Projects started before 1.2.2020 aid shall be necessary to accelerate or widen the scope of the project

**Forms of aid:** Direct grants, repayable advances or tax advantages – aid granted by 30.06.2022

**Eligible costs:**

- Projects started as of 1.2.2020: all investment costs necessary for setting up the infrastructure
- Projects started before 1.2.2020: only additional costs in relation to the acceleration efforts or the widened scope shall are eligible

**Aid intensity:**

- 75% +15 pts if 2 MS in the project or if the investment is concluded within 2 months after date of granting
- No cumulation of aid on the same eligible costs
- A loss cover guarantee may be granted in addition to a direct grant
- Services provided by infrastructure shall correspond to market price
- Infrastructure open to several users - access transparent and non discriminatory basis
Investment aid for production of Covid-19-relevant products (3.8)

- Investment aid for the production of Covid-19-relevant products, treatments, material, medical devices, hospital & medical equipment, materials, disinfectants etc.

Beneficiaries:

- Undertakings in difficulty except Medium and Large undertakings already in difficulty on 31/12/2019 - Healthy companies also eligible

Incentive effect:

- Projects started as of 1.2.2020 no incentive effect needed
- Projects started before 1.2.2020 aid shall be necessary to accelerate or widen the scope of the project

Forms of aid: Direct grants, repayable advances or tax advantages – aid granted by 30.06.2022

Timing: investment shall be completed within 6 months. If not 25% of aid shall be reimbursed per month of delay

Eligible costs:

- Projects started as of 1.2.2020: all investment costs and cost of trial runs of the new production facilities
- Projects started before 1.2.2020: only additional costs in relation to the acceleration efforts or the widened scope shall are eligible

Aid intensity:

- 80% +15 pts if 2 MS cofinance the project or if the investment is completed within 2 months after date of granting
- No additioning of aid on the same eligible costs
- A loss cover guarantee may be granted in addition to a direct grant.
Cumulation rules

- Temporary aid measures may be cumulated with one another.
  - Guarantee (m. 3.2) and public loans (m. 3.3) shall not be cumulated on the same loan
  - If public guarantee (m. 3.2) and public loan (m. 3.3) are granted to an undertaking on different loans, the overall amount of loans per beneficiary does not exceed:
    - double annual wage bill or 25% of 2019 turnover or 18 or 12 months liquidity needs

- Temporary aid measures may be cumulated with aid under de minimis regulations provided the provisions and cumulation rules of this regulation are respected:
  - If aids are on different eligible costs -> no rule to apply
  - If aids are on same eligible costs -> TF aid intensities must be respected

- Temporary aid measures may be cumulated with aid under GBER provided the provisions and cumulation rules of this regulation are respected:
  - If aids are on different eligible costs -> no cumulation rule to apply
  - If aids are on same eligible costs -> GBER aid intensities must be respected
Conclusion

- A wide range of intervention options
  - 14 state aid measures
  - All forms of aid possible

- Very high amounts of public aid
  - Limited amount of aid + de minimis aid = up to 2,5 M€ per undertaking
  - Loans and/or guaranties = up to 25% of turnover
  - Recapitalisation measures non capped
  - support for uncovered fixed costs = up to 12 M€ per undertaking

- Aid schemes adopted very quickly by the Commission:
  - Only few days for approval decisions

- Obligation to notify before cofinancing with ESI Funds
The UKRAINE 2022 temporary Framework

- Adopted by the Commission 23 March 2022
  - 4 state aid measures
  - In the context of the Ukrainian crisis
  - All forms of aid possible

- A smaller framework than Covid
  - Limited amount of aid 0.4 M€ per undertaking (measure 1)
  - Liquidity support in the form of guarantees (measure 2)
  - Liquidity support in the form of subsidised loans (measure 3)
  - Aid for additional costs due to exceptionally severe increases in natural gas and electricity prices (Measure 4)

- Applicable until December 31 2022
Thank You!
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