

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

Jean-Pierre Bove
Lawyer
External State Aid Expert
FCAE

The training has been organised by EIPA and CPVA under the Framework Contract Nr 2023CE160AT004.

1


European
Commission

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

 **EIPA** | European
Institute of
Public
Administration

 **CPVA** | Central project
management
agency

2



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 (except SME < 3 years)
- 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**.



3




Aid to undertakings in difficulty before Covid crisis

Several possibilities:

- Use “**de minimis**” regulations:
 - General de minimis regulation **2023/2831**
 - Fishery and aquaculture de minimis regulation **2023/2391**
 - Agriculture de minimis regulation **2023/2391**
- 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

4




2020 Temporary framework for state aid in the Covid context (1)

- Covid crisis context in early 2020
- 6 communications adopted by the commission in 20 months
- **Temporary Framework Com.** 19 March 2020 (OJEU 20 March 2020)
- **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
- **7° Amendment** of the temporary framework com of 7 november 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 procédure
- More than **1300** EC decisions on Covid state aid since 12 March
- Ex: about 50 decisions adopting aid schemes in France

5





2020 Temporary framework for state aid in the Covid context (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 2023

Until december 31 2023

6




The UKRAINE & Crisis temporary Framework

- Adopted by the Commission **23 march 2022**
- **1st amendment 21 July 2022**
- **2nd amendment 28 oct 2022**
 - **7 state aid measures**
 - **in the context of the Ukrainian crisis**
 - **All forms of aid possible**
- **3rd Amendment 17 mars 2023 transformed into a Temporary Crisis and Transition Framework** for State Aid measures to support the economy following the aggression against Ukraine by Russia
- **4th Amendment 21 November 2023** – several changes






7




The Crisis and transition temporary Framework

- Limited amount of aid **2 M€ per undertaking (measure 2.1)** 30 june 2024
- Liquidity support in the form of guarantees **(measure 2.2)** 31 dec 2023
- Liquidity support in the form of subsidised loans **(measure 2.3)** 31 dec 2023
- Aid for additional costs due to exceptionally severe increases in natural gas and electricity prices **(Measure 2.4)** 30 june 2024
- Aid for accelerating the rollout of renewable energy storage – REPOWER EU **(measure 2.5)**
- Aid for decarbonisation of industrial production **(measure 2.6)**
- Aid for additional reduction of electricity consumption **(measure 2.7)**
- Aid for accelerated investments in sectors strategic for the transition towards a net-zero economy **(measure 2.8)**

} 31 Dec25

8



Limited amount of aid (2.1)

Beneficiaries:

- aid granted to undertakings affected by the crisis
- Aid granted by **31.06.2024**

Amount of aid:



- Total aid up to **2,25 M€** (general case)
- Total aid up to **280 k€** (agricultural production)
- Total aid up to **335 k€** (fisheries and aquaculture)

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


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 GGE calculation.
- The total of the loan, guarantee, or equity intervention must be < or = the ceiling amount.






9



Cumulation rules

- **Temporary aid measures may be cumulated with one another.**
- 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

10



Crisis and transition temporary Framework

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
- <https://webgate.ec.europa.eu/competition/transparency/public?lang=en>
- MS must submit annual reports to the Commission for each aid scheme approved
- MS must maintain for **10 years** detailed records regarding aid provided



11



Thank You!

Jean-Pierre Bove

Jpbove-avocat@fcae.eu



The training has been organised by EIPA and CPVA under the Framework Contract Nr 2023CE160AT004. The opinions expressed are those of the contractor only and do not represent the EC's official position.



12