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State aid. The Commission will adopt a State aid temporary framework to support the economy in the context of the COVID-19 outbreak

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"The Commission will enable Member States to use the full flexibility foreseen under State aid rules to tackle this unprecedented situation".

With these unequivocal words, today the Commission approved a Temporary Framework on State aid to support undertakings in the context of the Covid-19 outbreak (the "**Temporary Framework**").

The Temporary Framework sets out special provisions modelled on the temporary framework that was adopted in 2009, at the outset of the financial crisis, and is based on Article 107(3)(b) TFEU, that allows aids aimed at remedying a serious disturbance to the economy of Member States.

The final version[1] was presented today by the Commission, setting out the conditions on the basis of which the Member States could (i) set up schemes direct grants (or tax advantages) of up to **€ 800,000 to a single company**; (ii) give subsidised **State guarantees** on bank loans; (iii) enable public and private loans with **subsidised interest rates**; (iv) provide **aid to banks** to be channelled to final customers; (v) introduce **short-term export credit insurance**.

In order to avoid aid unrelated to the Covid-19 outbreak, only undertakings that entered into difficulty after **31 December 2019** will be eligible for aid under the Temporary Framework.

The Temporary Framework complements but **does not substitute** the tools already available to Member States for granting aid in line with State aid rules. On Friday, the Commission [2]stated that it is ready to swiftly authorise aid granted by individual Member States on the basis of various existing instruments. The Commission referred to:

(a) the **rescue and restructuring Guidelines** (allowing support schemes for SMEs (Small and Medium Enterprises);
(b) aid to compensate companies for the damage directly caused by **exceptional occurrences** under Article 107(2)(b) TFEU; and
(c) aid to remedy a **serious disturbance in the economy**, under Article 107(3)(b) TFUE.

The Commission acknowledged that the impact of the COVID-19 outbreak in Italy is of a nature and scale that allows the use of Article 107(3)(b) TFEU, a legal basis rarely used in the past, especially for

[1]https://ec.europa.eu/commission/presscorner/detail/en/ip_20_496
[2] https://ec.europa.eu/commission/presscorner/detail/en/ip_20_459

Nctm Studio Legale
Via Agnello 12
20121 Milano

T +39 02 72551.1
F +39 02 72551.501
C.F e P.IVA: IT 12988470154

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interventions potentially affecting different sectors of the economy (such as tourism, transport, hotels, restaurants). Aid granted on this legal basis is considered a priori not of a nature to generate distorting effects on competition.

Of particular interest is the Commission statement that possible aid to banks, in the form of guarantees and liquidity (even outside the scope of the Temporary Framework), could also be granted under Article 107(3)(b) TFEU and will not be classified as "extraordinary public financial support" within the meaning of Directive 2014/59 ("BRRD"). In other words, the public support, if needed to mitigate the impact of Covid-19 on the banking sector, will not trigger the controversial mechanisms provided by the BRRD for the resolution of credit institutions (bail-in, etc.).

Member States could grant public support either in the form of aid schemes (for specific sectors, specific categories of enterprises) or in the form of individual aid (in favour of individual enterprises), which the Commission promises to examine and approve as a matter of urgency, within days or hours from the formal notification.

It remains to be seen how the Member States will use the wide degree of discretion allowed by the new and existing rules. On March, 17th, the Italian Government approved the Decree No. 18/2020 (so called "Healing Italy Decree"), and mobilized around 25 million Euro to support the economy. Many of the proposed measures do not qualify as State aid under Article 107(1) TFEU, either because they are available to all companies (such as the extension of payment deadlines for corporate tax or social contributions) or don’t favour undertakings exercising an economic activity (i.e. public health service). For other measures, compliance with the criteria set out in the State aid rules will have to be checked more carefully, although it is clear that the dialogue between the Italian Government and the Commission on the merit of the measures (e.g. on the strengthening of the SME Guarantee Fund and on other support measures to SME) is already underway.

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