Version of 14 April 2020

Corona Crisis: EU State Aid Decisions for Germany

The following article presents the current decisions of the European Commission in EU state aid law during the corona crisis for the German legal sphere.

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Update of 14 April 2020:

• Commission proposal to extend the Temporary Framework for State aid to recapitalisation measures of 9 April 2020

• Approval of the amendments to the federal regulations "Small Grants 2020" and "Loans 2020" to further support the economy after the Corona outbreak of 11 April 2020

• Approval of the guarantee scheme to stabilise the domestic commercial credit insurance market during the coronavirus pandemic of 14 April 2020

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A. Development of EU state aid law in the corona crisis

I. Temporary framework for state aid to support the economy in view of the current COVID-19 outbreak

By decision dated 19 March 2020 (C(2020) 1863 final)[1] the European Commission adopted a "Temporary Framework for state aid to support the European economy in response to the current COVID-19 outbreak". The measures presented are a supplement to the already existing possibilities under state aid law. The Temporary Framework will initially be valid until 31 December 2020. The option of a possible extension will then be examined by the Commission.

By decision dated 27 March 2020 (C(2020) 2044 final), the Commission decided to temporarily remove all countries from the list of countries with "marketable risks" annexed to the

[1] OJ EU No. CI 91 of 20 March 2020, p. 1

Communication on short-term export-credit insurance[2]. This modification will in principle allow public insurers to offer insurance cover for short-term export credit risks for all countries without the need for the Member State concerned to demonstrate that the risks are temporarily "non-marketable" in the country concerned. This is intended to increase the availability of state short-term export credit insurance.

In a **post on 2 April**, we provided comprehensive information on the classification of the Temporary Framework of 19 March 2020 within the EU state aid regime. The post is available at Link.

II. Modification and extension of the Temporary Framework as of 3 April 2020

With its decision of 3 April 2020, the EU Commission modified and extended the Temporary Framework in order to enable the Member States in view of the coronavirus outbreak to accelerate the research, testing and production of coronavirus-relevant products, to protect jobs and to further support the economy.

A further five types of aid measures are added to the Temporary Framework:

(i) Support for research and development (R&D) related to the coronavirus

To address the current health crisis, Member States may grant aid in the form of direct subsidies, repayable advances or tax benefits for R&D aimed at fighting coronavirus and other viruses.

(ii) Support for the establishment and expansion of testing facilities

Member States may grant aid in the form of direct subsidies, tax benefits, repayable advances and loss compensation guarantees to support investments to build or extend infrastructure needed to develop and test products needed to contain the coronavirus outbreak until the first commercial use. This includes pharmaceuticals (including vaccines) and treatments, medical devices and medical equipment (including pulmonary ventilators and protective and diagnostic clothing), disinfectants, and data collection and processing tools useful in fighting the spread of the virus.

(iii) Support for the manufacturing of products relevant to the fight against the coronavirus outbreak

Member States may grant aid in the form of direct subsidies, tax benefits, repayable advances and loss compensation guarantees to support investments enabling the rapid manufacturing of products (listed in clause (ii)) for the fight against the coronavirus.

[2] Communication 2012/C 392/01 from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, OJ EU No. C 392 of 19 December 2012, p.1.

(iv) Specific support in the form of a tax deferral and/or suspension of social security contributions
In order to further reduce liquidity constraints on companies caused by the coronavirus crisis and to preserve jobs, Member States may selectively defer the payment of taxes and social security contributions in the sectors and regions or for the types of companies hit hardest by the outbreak.

(v) Specific support in the form of wage subsidies for employees
In order to help limit the effects of the coronavirus crisis on the workforce, Member States may contribute to the wage costs of companies in the sectors or regions most affected by the coronavirus outbreak and which would otherwise have to lay off staff.

The modification of the Temporary Framework also extends the existing forms of assistance that Member States may provide to businesses in distress.

III. EU Commission proposal to extend the Temporary Framework to recapitalisation measures of 9 April 2020

With a statement of 9 April 2020 the European Commission submitted a proposal to the Member States to extend the Temporary Framework to recapitalisation measures. The Commission aims to bring the amended Temporary Framework into force this week.

The participation of the state in the companies concerned (entry, remuneration, exit) should be subject to clear conditions, strict governance rules and appropriate measures to limit possible distortions of competition. One of the aims is to ensure that states receive an appropriate remuneration for the risks they take on. Member States must also develop an exit strategy, in particular for large companies in which the state will acquire a higher equity stake, to ensure that the companies return to viability without further state support once the economic situation has stabilised. However, according to the Commission's proposal, recapitalisations in this form must always remain "last resort" because of their significant impact on competition in the internal market.

Once the relevant changes to the Temporary Framework have been published, we will update our contribution and bring you up to date.

B. Authorisation decisions of the EU Commission in respect of Germany

The EU Commission has already taken six decisions on aid schemes notified by Germany on the basis of the Temporary Framework in the corona crisis. In total, the Commission has already approved 53 national measures on the basis of the Temporary Framework by 14 April 2020 (as of 14 April, 12:00 p.m.).

1. By decision *SA.56714* of 22 March 2020 the EU Commission approved the "Special Programme 2020 for Investment and Working Capital Financing". The measure consists of two support programmes to be implemented by the German development bank

Kreditanstalt für Wiederaufbau ("KfW"). The first loan programme covers up to 90 percent of the risk for loans to companies and can have a term of five years. Depending on liquidity requirements, the loan can amount to up to EUR 1 billion.

The second loan programme provides for cooperation between KfW and private banks in order to provide larger loan amounts. The risk covered by the state can be up to 80 percent of a loan (but not more than 50 percent of a company's total debt capital).

Individual aid may be granted under both measures until 31 December 2020.

The Commission approved the notified schemes on the basis Temporary Framework for state aid to support the economy in view of the current COVID-19 outbreak and found that the measures notified by Germany met the conditions laid down in the Temporary Framework and that the measures were necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State. Accordingly, the measures comply with Article 107 (3) (b) TFEU.

2. By decision *SA.56790* dated 24 March 2020 the EU Commission has approved the federal regulation "Small Grants 2020" The notified measure comprises direct subsidies to support companies affected by the coronavirus outbreak. The individual aid may be granted in the form of direct subsidies, repayable advances or tax and payment advantages and is limited to EUR 120,000 per enterprise active in the fisheries and aquaculture sector, or EUR 100,000 per enterprise active in the primary production of agricultural products. For all other enterprises affected by the coronavirus outbreak, up to EUR 800 000 may be granted per enterprise. The total amount of aid available under this scheme has not yet been finalised in view of the uncertain development of the pandemic, but is estimated by the German authorities at no more than EUR 45 billion. The granting authorities at federal, regional and local level are responsible for selecting beneficiaries.
The regulation will expire on 31 December 2020. If the aid is granted in the form of tax benefits, this period does not apply and the aid is deemed to be granted when the tax return for 2020 is due.

The scheme was approved on the basis of Temporary Framework. The Commission found that the scheme notified by Germany meets the conditions laid down in the Temporary Framework and that the measure will help to address the economic impact of coronavirus in Germany. It is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State. Accordingly, the scheme complies with Article 107 (3) (b) TFEU.

3. By decision *SA.56787* dated 24 March 2020 the EU Commission has approved the federal "Guarantees 2020" scheme. The measure provides for aid in the form of guarantees for loans and is to be implemented by the German federal and state authorities and by development banks and guarantee banks. The scheme is open to all enterprises and provides for loan guarantees on favourable terms to help meet the immediate operating and investment needs of the economy. The annual guarantee premiums are set at 25 basis points ("bps") for SMEs and 50 bps for large companies for the first year. For years two and three they are set at 50 basis points for SMEs and 100 basis points for larger companies. For years four to six they are set at 100 basis points for SMEs and 200 basis points for larger companies. The maximum duration of the guarantees is limited to six years and the measures may be granted until 31 December 2020.

The Commission approved the notified scheme on the basis of the Temporary Framework and found that the measure meets the conditions laid down in the Temporary Framework and that it is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State. Accordingly, the scheme complies with Article 107 (3) (b) TFEU.

4. By decision *SA 56863* dated 2 April 2020 the EU Commission has approved the federal regulation "Loan 2020". The measure consists of subsidised interest rates on loans to beneficiaries which can be provided directly by the granting authorities or through other financial intermediaries for the investment and working capital needs of the beneficiaries. The approved measure extends the measures already adopted on 22 March 2020 (see decision 1). While the first scheme was designed in such a way that subsidised loans could only be granted by the KfW, the new scheme now allows other regional authorities and development banks to act in the same way.

The applicable interest rates shall be the base rate (IBOR for 1 year or equivalent, as published by the Commission) in force on 1 January 2020 plus a credit risk margin of 0.25% for SMEs and 0.5%for large companies in the first year; for years two and three, the credit risk margin shall be set at 0.5% for SMEs and 1.0% for larger companies; for years four to six, the credit risk margin shall be set at 1.0% for SMEs and 2.0% for larger companies. In any case, the minimum lump-sum interest rate (base rate plus credit risk margin) for SMEs is at least 0.1 percent in the first, second and third year. The term of the loan is limited to a maximum of six years. Aid may be granted under the measure until 31 December 2020.

The scheme was approved on the basis of Temporary Framework. The Commission found that the measure notified by Germany meets the conditions laid down in the Temporary Framework and that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State. Accordingly, the measure complies with Article 107 (3) (b) TFEU.

5. By decision *SA.56974* dated 11 April 2020 the EU Commission has approved the German federal schemes „Small Grants 2020“ und „Loan 2020“ (see decisions 2 and 4). The KfW Fast Loan, about which we inform you in our article of 7 April 2020, is based on the amendment of the federal regulation "Small Grants 2020": Link.

The federal regulation "Small Grants 2020" will be amended so that, in addition to the previously approved aid in the form of direct grants, repayable advances and tax or payment advantages, aid can now also be granted in the form of loans, guarantees and equity. In particular, guarantees can cover 100% of the risk of loans with a nominal amount of up to EUR 800,000. Loans may be granted directly to the companies or indirectly through credit institutions and other financial institutions acting as financial intermediaries.

The amendment to the federal regulation "Loan 2020" for the granting of loans on favourable terms now provides that interest rate subsidies are also possible for loans granted to aid recipients either directly by an authorising authority in association with private banks or indirectly in the form of a partial risk sharing for loans to cover the investment and working capital requirements of the beneficiaries.

The Commission approved the notified amendment scheme on the basis of the Temporary Framework in the as amended on 3 April 2020 and found that the measure meets the conditions laid down in the Temporary Framework and that it is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State. Accordingly, the amendments comply with Article 107 (3) (b) TFEU.

6. Mit Entscheidung *SA.56941* dated 14 April 2020 the EU Commission has approved the German guarantee scheme to stabilise the commercial credit insurance market in the coronavirus pandemic. Trade credit insurance protects companies that supply goods and services when customers do not pay. The aim of the scheme is to ensure that such trade credit insurance continues to be available to all businesses so that buyers of goods and service customers do not have to pay in advance and reduce their immediate liquidity needs.

The approved guarantee mechanism, which is open to all credit insurers in Germany, provides for risk sharing between the insurers and the State up to a volume of EUR 5 billion and, if necessary, offers an additional safety net that can cover up to EUR 30 billion. It also covers trade credits for buyers of goods and services in third countries. In return, the trade credit insurers have made a commitment to Germany that they will maintain the current level of protection despite the difficulties faced by companies in the Corona crisis. The guarantee granted by Germany is limited to trade credits granted until the end of this year.

The Commission approved the notified scheme on the basis of the Temporary Framework in the as amended on 3 April 2020 and found that the measure meets the conditions laid down in the Temporary Framework and that it is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State. Accordingly, the scheme complies with Article 107 (3) (b) TFEU.

By notifying the measures before their implementation, the German authorities have complied with the notification and authorisation requirement under Article 108 (3) TFEU.

Should you have further questions, please send us an e-mail to [Christopher.Theis@bblaw.com] or [Ramona.Tax@bblaw.com].

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