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European Commission amends the Temporary Framework and prolongs existing state aid rules

The European Commission has taken this decision due to the effects of the current crisis and after consultation with member states.

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Temporary Framework

The European Commission adopted the Temporary Framework for state aid measures on 19 March 2020 to support the economy due to the impact of Covid-19 (Temporary Framework).

The Temporary Framework was first amended on 3 April 2020 to include aid to accelerate research, testing and production of Covid-19 related products, as well as to protect jobs and support the economy during the crisis. A second amendment was introduced on 8 May 2020 to ease access to capital and liquidity for undertakings affected by the crisis.

The latest amendment to the Temporary Framework introduced on 29 June 2020 provide for the following:

- aid to all micro and small undertakings even if they would fall under the category of an ‘undertaking in financial difficulty’ on 31 December 2019 provided that they are not subject to collective insolvency procedure under national law and they have not received rescue aid (which has not been repaid) or restructuring aid (and are still subject to a restructuring plan).
- encouraging undertakings to seek capital injections from the State as well as the market with more favourable conditions put in place for private investors who contribute together with the State subject to certain conditions.
- aid should not be conditioned on the relocation of a production activity from the territory of the European Economic Area to the territory of a member state as this is harmful to the internal market.

The definition of ‘undertakings in financial difficulty’ and the features of micro and small undertakings are both set out in General Block Exemption Regulation (GBER).

The European Commission recognises that small and micro enterprises contribute heavily to jobs and growth in the European Union by generating more than 37% of value added and 50% of employment in the non-financial sector. Yet they have been particularly affected by the liquidity shortage caused by the economic impact of the pandemic, as well as difficulties to access finance, which if left unaddressed could lead to a large number of bankruptcies.

Further, the European Commission recognises that given their limited size and limited involvement in cross-border transactions, it considers state aid to micro and small undertakings is less likely to distort competition in the internal market and affect intra-EU trade than state aid to medium-sized and large companies. This latest amendment covering micro and small undertakings is a welcome development due to complaints that start-ups with a high debt ratio were precluded from being supported.

This amendment will also be welcome news to smaller businesses who may have fallen foul of the ‘undertaking in difficulty’ rules for technical reasons or due to sector-specific financing arrangements. Similarly, public bodies (particularly local government) will find it useful to both provide support to more businesses and streamline the process for granting support.

Prolongation of existing state aid rules

On 2 July 2020, the European Commission prolonged the validity of the GBER, the De Minimis Regulation and certain Guidelines.

The key changes are as follows:

- **GBER**
  - the period of validity is extended to 31 December 2023
  - it may apply to undertakings "which were not in difficulty on 31 December 2019 but became undertakings in difficulty during the period 1 June 2020 to 30 June 2021".
- **De Minimis Regulation**
  - The period of validity is extended to 31 December 2023.
- **Guidelines on state aid for rescuing and restructuring non-financial undertakings in difficulty**
  - The period of validity is extended to 31 December 2023.
- **Guidelines**
  - The following guidelines are extended to 31 December 2021:
    — Regional state aid for 2014-2020 – the amendment regarding undertakings in difficulty under GBER also applies.
    — State aid to promote risk finance investment.
    — Environmental protection and energy – the amendment regarding undertakings in difficulty under GBER also applies.
    — Execution of important projects of common European interest (IPCEI) – the amendment regarding undertakings in difficulty also applies.
    — Short term export credit insurance (STEC).

The European Commission has taken this decision due to the effects of the current crisis and after consultation with member states. This indicates that the European Commission does not expect to reform these rules during this period and potentially the timeframe of the Temporary Framework may be extended.

It seemed likely that some of these rules would have been extended regardless of Covid-19 unless the Commission moved very quickly to consult on and implement changes, but clearly the resources dedicated to Covid-19 measures will have diverted resources away from these processes too.

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