European Commissions Continues to Amend COVID-19 Temporary State Aid Framework

Article By:

Hendrik Viaene

On January 28 2021, the European Commission (Commission) amended its COVID-19 Temporary State aid Framework (Temporary Framework) for the fifth time. The Commission adopted the Temporary Framework at the beginning of the COVID-19 crisis (March 19 2020) to support the economy and help Member States set up various aid measures. Since the adoption of the Temporary Framework, the Commission has approved hundreds of national COVID-19 support measures.

Given that the COVID-19 crisis continues to affect the European economy, the European Commission adopted a fifth Amendment to the Temporary Framework, which includes the following changes:

- Extension of the Temporary Framework until December 31 2021;
- Higher aid ceilings regarding limited amounts of aid and support for uncovered fixed costs;
- Clarifications and amendments to several provisions.
- The continued temporary removal of all countries from the "marketable risk" country list under the STEC (Short Term Export Credit) insurance Communication.

Extension of the Temporary Framework until December 31 2021

At the time of its adoption, the Temporary Framework allowed Member States to provide aid until December 31 2020. However, in October 2020, the Commission granted its first extension to the Temporary Framework allowing aid to be granted up until June 30 2021. The Commission also made an exception for recapitalisation measures, which could be granted until September 30 2021.

Member States will now have the ability to provide aid in line with the Temporary Framework until December 31 2021.

Higher Aid Ceilings and Support for Uncovered Fixed Costs

Limited Amounts of Aid

The Commission increased the aid ceiling concerning limited amounts of aid in the form of direct grants, tax and payment advantages and other forms such as repayable advances, guarantees, loans and equity. Previously, Member States could grant 800,000 euros per undertaking. The Commission has now increased this aid ceiling to EUR 1.8 million. For support lent in the fishery and aquaculture sector, the aid ceiling increased from EUR 120,000 to EUR 270,000. For support in the primary production of agricultural products, the aid ceiling is now EUR 225,000 euros instead of EUR 100,000.

Furthermore, Member States can now convert limited amounts of aid, granted based on a scheme, to another form of aid. In particular, the Commission intends aid in the form of repayable advances, loans or other repayable instruments to be converted into other forms of aid, such as grants. The conversion must take place by December 31 2022 at the latest and must be based on specific transparent and non-discriminatory conditions.

Aid in the Form of Support for Uncovered Fixed Costs

The Commission also increased the aid ceiling regarding aid in the form of support for uncovered fixed costs. Whereas the aid ceiling amounted to EUR 3 million per undertaking, the ceiling now has gone up to EUR 10 million per undertaking.

Furthermore, the Commission clarified that Member States in addition to granting this type of aid in the form of direct grants, guarantees or loans, may also lend support in the form of tax and payments advantages, repayable advances and equity.

Clarifications and Amendments to Certain Provisions

Aid to Compensate Sectors Particularly Affected by COVID-19

The Commission has widened the scope of this type of aid and now accepts aid for damage caused by measures precluding the beneficiary *de jure or de facto* from operating its economic activity or a specific and severable part of its activity. The Amendment gives a number of examples.

It also stresses that no overcompensation should take place. To safeguard against this, the Commission will require a rigorous quantification of presumed damage.

Aid in the Form of Guarantees on Loans

The Commission introduced a new feature relating to aid in the form of guarantees on loans. Member States can now grant guarantees at reduced premiums on newly issued and subordinated debt instruments. This new feature operates similarly to aid in the form of interest rate subsidies for subordinated loans, introduced in the second Amendment to the Temporary Framework.

The amount of the guaranteed subordinated debt should not exceed the following ceilings:

- (i) two-thirds of the annual wage bill of the beneficiary for large companies and the annual wage bill of the beneficiary for SMEs, and

- (ii) 8.4% of the total turnover of the beneficiary in 2019 for large enterprises and 12.5% of the total turnover of the beneficiary in 2019 for SMEs.

Further, the Commission clarified that public guarantees on loans can also cover factoring products. More specifically, it concerns guarantees on recourse and reverse factoring where the factor has the right of recourse to the factoree. The eligible reverse factoring products are limited to products that are used only after the seller has already provided its part of the transaction, *i.e.* after the product or service has been delivered.

Aid in the Form of Subsidised Interest Rates for Loans

The Commission also clarified that Member States can grant aid in the form of subsidised interest rates for loans to micro or small enterprises which were had already been in difficulty on December 31 2019.

Aid in the Form of Wage Subsidies for Employees to Avoid Lay-offs During the COVID-19 Outbreak

Another clarification in the fifth Amendment concerns aid in the form of wage subsidies for employees to avoid lay-offs. In principle, the monthly wage subsidy may not exceed 80% of the monthly gross salary of the benefitting personnel (or 80% of the average monthly wage equivalent income of the self-employed individual). However, Member States may also notify, in particular in the interest of low wage categories, alternative calculation methods of the aid intensity. The Commission now explained that these alternatives may not only relate to the national wage average or minimum wage, but also the monthly gross wage cost of the employees concerned (or the monthly wage equivalent income of self-employed individuals) before the COVID-19 outbreak.

Conclusion

The Fifth Amendment to the Temporary Framework creates more opportunities for Member States to support companies during the COVID-19 crisis, and also provides some helpful clarifications. Member States can now decide to extend the period of application of their existing aid measures or amend them in line with the Temporary Framework. Subsequently, Member States can notify a list of the measures they wish to change, upon which the Commission can adopt one approval decision regarding all these measures.

As it is possible that the COVID-19 crisis will continue to affect the European economy in 2022, the Commission stated that it will make an assessment before December 31, 2021 whether it would be necessary to further extend and/or adapt the Temporary Framework.

National Law Review, Volume XI, Number 29

Source URL:https://natlawreview.com/article/european-commissions-continues-to-amend-covid-19-temporary-state-aid-framework