



COVID-19

## State aid during the Coronavirus crisis

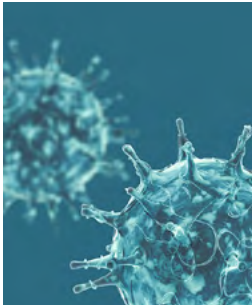
**The spread of the SARS-CoV-2 Coronavirus requires rapid and determined government action. Economic stimulus, emergency programs and financial support by the member states must be designed in accordance with State aid rules. The European Commission has set up short-term programs to combat the economic consequences of the Coronavirus<sup>1</sup> and temporary measures to facilitate the measures of the EU member states.**

On 12 March 2020, the Commission approved the first State aid to compensate effects of the Coronavirus incurred for event organizers in Denmark (SA.56685)<sup>2</sup>. The decision shows the way for further measures adopted by member states. Firstly, the Commission approved the State aid within 24 hours, thereby signaling the expected cooperative and rapid processing of aid notifications. Secondly, the Commission has applied a legal exception previously only applied in extreme exceptional circumstances, particularly after the terrorist attacks in September 2001 and the closure of airspace due to the eruption of the Eyjafjallajökull volcano in 2010. The Commission did not consider a general non-application of EU State aid rules - as it did in the 2008/2009 financial crisis. Such action would also require an amendment to the EU treaty. Germany has recently announced its first stimulus package called “Solidarity Fund“.

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<sup>1</sup> Commission, Press Release IP/20/440 of 10 March 2020 ([https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_440](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_440)).

<sup>2</sup> Commission, Press Release IP/20/440 of 10 March 2020 ([https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_440](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_440)).



Since 10 March 2020, the Commission has published a number of documents on the application and interpretation of EU State aid rules in connection with the Corona crisis, in particular:

- a Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak<sup>3</sup>. The Community framework enables, inter alia, (i) direct grants of up to EUR 800,000, (ii) government guarantees for bank loans of up to 25% of the borrower's annual turnover and (iii) discounted interest rate loans from the public sector. Under this framework, in deviation from the Rescue and Restructuring Aid guidelines<sup>4</sup>, the Commission will also approve state support to companies that have only experienced economic difficulties as a result of the Corona crisis;
- an overview of how EU Member States can provide liquidity support under existing regulations<sup>5</sup>, and
- a guide to applying the State aid exception for exceptional circumstances<sup>6</sup> to compensate for damage directly related to the spread of the Coronavirus.

### European Legal Framework

In connection with the Coronavirus, the Commission will apply two exceptions to the prohibition of aid under Article 107 (1) of the Treaty on the Functioning of the European Union (TFEU):

- **The legal exception for compensation for damages** (Art. 107 Para. 2 (b) TFEU): According to this, State aid to remedy damages caused by natural disasters or other extraordinary events is compatible with the internal market. The amount of State aid is limited to compensation for damages directly related to the event. In the handout on the application of the State aid exception for exceptional circumstances, the Commission lists, in particular for the transport sector (see Annex I to the handout) detailed requirements under which circumstances damages can be compensated. This is based on a decision from 2011 on State aid in favour of airlines from Slovenia in response to the Eyjafjallajökull outbreak in 2010.<sup>7</sup> The measures must be notified to the Commission, however the Commission has no further judgment. The Commission's first aid decision in connection with the Coronavirus for event organizers in Denmark is based on this legal foundation.
- **The discretionary exemption for significant disruptions in economic life** (Art. 107 Para. 3 (b) old. 2 TFEU): According to this, State aid to remedy a serious disturbance in the economic life of a Member State can be regarded as compatible with the internal market. Such State aid may also include indirect consequences that disrupt the economic life of a member state and therefore go beyond the legal exception to compensate

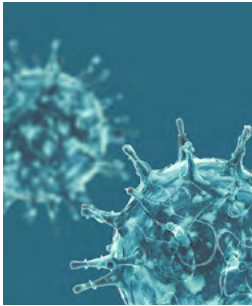
<sup>3</sup> Commission, Communication of 19 March 2020, Temporary Framework for State aid measures to support the economy in the current COVID-19 out-break, C (2020) 1863 final, retrievable at: [https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/sa\\_covid19\\_temporary-framework.pdf](https://ec.europa.eu/competition/state_aid/what_is_new/sa_covid19_temporary-framework.pdf).

<sup>4</sup> EC Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (2014/C 249/01).

<sup>5</sup> Retrievable at: [https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/state\\_aid\\_liquidity\\_support.pdf](https://ec.europa.eu/competition/state_aid/what_is_new/state_aid_liquidity_support.pdf).

<sup>6</sup> Retrievable at: [https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/Notification\\_template\\_107\\_2\\_b\\_PUBLICATION.pdf](https://ec.europa.eu/competition/state_aid/what_is_new/Notification_template_107_2_b_PUBLICATION.pdf).

<sup>7</sup> Commission Decision of 01 August 2011, SA.32163 – Slovenia – Rectification of consequences of the damage caused to air carriers and airports by earthquake activity in Iceland and the resulting volcano ash in April 2010, retrievable at: [https://ec.europa.eu/competition/state\\_aid/cases/238917/238917\\_1316971\\_59\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases/238917/238917_1316971_59_2.pdf).



for damages. Their approval is at the discretion of the Commission (“balancing test“) and therefore leaves the European level with greater influence on the actions of the Member States. The Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak is based on this exception and the Commission is expected to examine and approve further stimulus programs of the EU member states.

The European level has not yet applied a further exemption in the context of the Coronavirus, a **decision of the Council of Ministers pursuant to Art. 108 Paras. (2) and (3) TFEU**. According to this, the Council, at the request of a member state, can – unanimously – “override” an imminent prohibition decision by the Commission if exceptional circumstances justify such a decision. In these cases, the state supervisory authority for compatibility with the internal market is exceptionally not with the Commission but with the Council. As an exception, the regulation is to be interpreted strictly. In the past there were no (published) corresponding decisions by the Council and currently the EU institutions have not taken this route for the time being.

### **Legal exception for damage compensation**

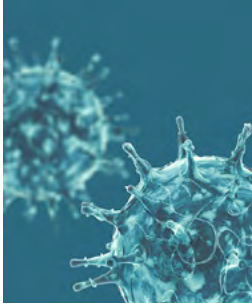
The Commission has recently classified the following cases as an extraordinary event (Art. 107 (2) (b) TFEU):

- The September 11, 2001 terrorist attacks and the subsequent closure of US airspace<sup>8</sup>
  - The Commission published a communication on “The impact of the attacks in the United States on the aviation industry“<sup>9</sup>. For example, it considered operating aid for insurers that had significant financial burdens from the terrorist attacks to be covered by the legal exception.
  - The Commission also committed itself to a cooperative, rapid review of compensation measures for losses incurred by airlines during or immediately related to the four-day closure of US airspace under State aid rules and the defined criteria in the communication.
  - In addition, the Commission approved a default fund set up to compensate British airlines for the four-day closure of US airspace<sup>10</sup>.
- In the context of the BSE animal epidemic around 2000 and on the occasion of feed contaminated with dioxin in 2008, the Commission approved State aid to compensate for damage because its cause was outside the relevant industries.
- The Commission has changed direction in the classification of animal diseases and plant diseases. It had previously treated these as extraordinary events in the sense of the legal exception, but from now on will assess measures in the agricultural sector on the basis of the discretionary exemption Article 107 (3) (b) old. 2.

<sup>8</sup> EGC, judgment of 25 June 2008, T-268/06.

<sup>9</sup> Commission, Communication of 10 October 2001, COM(2001) 574 final – The repercussions of the terrorist attacks in the United States on the air transport industry.

<sup>10</sup> Commission Decision of 12 March 2002, N854/2001 – Aid to airlines for closure of airspace.

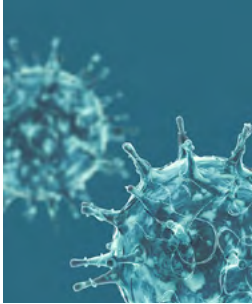


### **Discretionary exception for significant disruptions in economic life**

State aid to “remedy a significant disturbance in the economic life of a member state” may, in accordance with Article 107 (3) (b) old. 2 TFEU, be regarded as compatible with the internal market. The Commission applied this exemption in particular in the financial market and economic crisis.

- The outbreak and deepening of the financial and economic crisis in 2008 prompted the Commission to react quickly and to create instruments that left the necessary room for maneuver for the Member States. The Commission examined and approved measures for both the real economy and the financial sector. In the course of this, the Commission published several communications for the financial sector, which can still serve as a guide today. The criterion “considerable disturbance in the economic life of a Member State” must be interpreted narrowly. However, the Commission currently sees it as a given in all EU member states<sup>11</sup>.
- Appropriate measures in the financial sector included guarantees to hedge impaired assets, recapitalisation of financial institutions, controlled liquidations of financial institutions and the provision of liquidity support. The Commission specified the legal application in the financial market and economic crisis in four communications (Banking Communication, Recapitalisation Communication, Impaired Assets Communication and the Restructuring Communication).
- The criteria for testing created at that time and which differed from the Rescue and Restructuring Aid Guidelines – which may also point the way in the future – can be summarized as follows:
  - rescue as a contribution to overcoming the crisis,
  - limitation to the minimum offered / restriction of competition distortion to the required extent,
  - the beneficiary does not have to be a firm in difficulty (but a distinction is made between endogenous and exogenous difficulties; for companies that were previously in difficulty, stricter rules apply, for example, in relation to compensatory measures),
  - structural capital measures possible (also ad hoc), in the case of exogenous difficulties, even without restructuring, because the recipient is basically “healthy” (then only shows viability, exit strategy),
  - the amount of the personal contribution (“burden sharing”) is not specified
  - “One time, last time” does not apply here as an exception, as well as
  - rescue aid decisions within 24 hours (as in the first Corona aid decision).

<sup>11</sup> Commission, Press Release of 19 March 2020, IP/20/496, retrievable at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_496](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_496).



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