METAXAS & ASSOCIATES
ATTORNEYS AT LAW

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The EU Temporary Framework for State Aid in Response to COVID-19 Outbreak

The EU Temporary Framework for State Aid in Response to COVID-19 Outbreak

The COVID-19 -novel- coronavirus outbreak is testing public health systems, national responses to an economic slowdown and potential recession as well as government's and European Union institutions' overall capacity to respond to a crisis of this magnitude. As a global crisis – given the fact that the spread of the virus is an exponential phenomenon – it is made clear that the appropriate way to deal with its repercussions could be nothing less than a coordinated framework of actions (or response).

In this spirit and aiming to mitigate the negative economic effects of COVID-19 spread, the European Commission has presented a Temporary Framework concerning state aid measures to support the economy. As State aid measure is defined an advantage in any form conferred to undertakings on a selective basis by national public authorities. Grosso modo, the majority of State measures adopted by national governments to help ailing companies (loans, guarantees, etc.), particularly in periods of crisis, constitute State Aid. Current measures are using as a blueprint the previous Temporary Framework, applied during the financial crisis in 2008/2009, which proved to be an efficient tool to support the liquidity needs of businesses suffering from crisis-specific symptoms.

The Framework is based on Article 107(3)(b) of the TFEU, providing support to companies in financial difficulty as a result of the COVID-19 outbreak under State aid rules

In the particular (current) conjuncture, on 19 March 2020, following consultation with EU Member States, the European Commission adopted a Temporary Framework to support the economy in the context of the COVID-19 outbreak (the "Temporary Framework"). The Framework is based on Article 107(3)(b) of the Treaty of the Functioning of the European Union (TFEU), which allows measures to be taken to remedy a serious disturbance in the economy of a Member State, providing support to companies in financial difficulty as a result of the COVID-19 outbreak under State aid rules.

EU Regulatory Background

The EU Temporary Framework provides for five types of aid:

- Direct grants, selective tax advantages and advance payments, up to EUR 800,000 to a company to address its urgent liquidity needs.
- State guarantees for loans taken by companies from banks, to ensure banks continue to provide loans to the customers who need them.
- Subsidized public loans to companies, i.e. loans with favorable interest rates to help businesses cover immediate working capital and investment needs.
- Safeguards for banks that channel State aid to the real economy, in particular support for small and medium-sized companies. It is noted that such aid is considered as direct aid to the banks' customers, not to the banks themselves.
- Short-term export credit insurance.

Similarities between the set rules applied in 2008/2009 (which was also called "Temporary Framework") and the 2020 Temporary Framework

All state aid measures which are granted to combat the COVID-19 outbreak have to be notified to the Commission and cannot be implemented without the Commission's prior approval. This situation involves certain challenges for Member States, the Commission and for aid recipients. However, the EU is committed to provide the Member States with the necessary flexibility under EU state aid law as soon as possible to reduce the economic impact of the COVID-19 outbreak.

It is, also, noteworthy that the Temporary Framework is not self-executing, i.e. Member States cannot base measures directly on it. If Member States want to make use of the instruments mentioned-above, they first have to adopt so called "Schemes" (which are generally applicable) and which have to be notified to the Commission. The Commission then has to examine the compatibility of the proposed schemes with the Temporary Framework. Only after the "National Scheme" has been approved by the Commission, Member States can grant individual aid immediately without the Commission's approval.

Member States are able to create aid schemes to grant up to €800,000 gross to individual companies to address urgent liquidity needs

The measures possible under the Temporary Framework can go well beyond the tools currently available under the Greek support schemes. The Commission notes in its Communication that this derogation from EU State aid rules should be interpreted strictly and in light of rulings from the European Union courts, according to which the disturbance must affect the whole or an important part of the economy of the Member State concerned. All types of aid measures have in common that they may only be granted to companies, which were not in difficulty on 31 December 2019 but entered in difficulty thereafter as a result of the COVID-19 outbreak. They have to be granted by 31 December 2020 at the latest.

Measures under the 2020 Temporary Framework

1. Direct Grant or Tax Advantages

Under the Temporary Framework, the Member States are able to create aid schemes to grant up to €800,000 gross to individual companies to address urgent liquidity needs. This aid can be delivered in the form of a direct grant, repayable advance or tax advantage. The aid must form part of a scheme notified by Member States to the Commission with an estimated budget, and will not benefit from the temporary framework if it is granted as individual aid. Lower amounts apply to fishery companies (€120,000) and agricultural companies (€100,000), and further conditions apply to aid given to such companies. A company may receive this aid in combination with either state guarantees of loans or state subsidized loans, or short-term export credit insurance.

Subsidized guarantee must last less than six years and may only cover a maximum of 90% of the loan principal where the Member State and creditor bear any losses proportionally and under the same conditions, or 35% of the loan principal where losses are attributed to the Member State first

2. Subsidized Guarantees for Bank Loans

One of the most important instruments under the Temporary Framework is the possibility to grant State guarantees for bank loans. Member States are able to grant State guarantees relating to both investment and working capital loans at relatively low premiums. In order to benefit from the framework, the guarantee must not exceed 90% (where losses are sustained proportionally under same conditions by the credit institution and the State) and 35% (where losses are first attributed to the State and only then to the credit institutions, i.e. a first-loss guarantee) respectively. The duration of the guarantee is limited to a maximum of six years.

The Temporary Framework has defined a minimum level at which guarantee premiums are set and predetermines, for a given company (small and medium sized enterprises ("SMEs") or large enterprises) on the basis of the maturity of the loan (1 year, 2-3 years or 4-6 years), credit risk margins, ranging from 25 bps to 200 bps. However, as an alternative, Member States may notify schemes, considering these minimum levels as basis, but whereby maturity, pricing and guarantee coverage can be modulated (e.g. lower guarantee coverage offsetting a longer maturity).

Bank loans with a maturity beyond 31 December 2020 covered by the State guarantee are limited to a maximum of the double of the annual wage bill of the beneficiary (including social charges as well as the cost of personnel working on the company site but formally in the payroll of subcontractors) for 2019 or 25% of the turnover in 2019. This upper-limit can be very important given that the capital needs of some companies might exceed the annual wage bill. Only in duly justified cases and based on a "self-certification" by the beneficiary of its liquidity needs, the amount of the loan may be increased to cover the liquidity needs for the coming 18 months for SMEs and for the coming 12 months for large enterprises. For loans with a maturity until 31 December 2020, the amount of the loan principal may be higher with appropriate justification and provided that proportionality of the aid remains assured.

Member States are permitted to enable public or private loans with subsidized interest rates. The interest rate must be at least equal to the base rate applicable on January 1, 2020, plus a credit risk premium corresponding to the risk profile of the recipient

3. Loans at Preferential Terms (subsidized interest rates)

Another important tool under the Temporary Framework are the support measures in regard to subsidized interest rates for state loans: These loans must be granted at an interest rate, which is at least equal to the base rate applicable on 1 January 2020 plus the credit risk margin corresponding to the minimum level as defined by the above-mentioned State guarantees. Again, as an alternative, Member States may notify schemes, considering these rates as a basis, but whereby maturity, pricing and guarantee coverage can be modulated (e.g. lower guarantee coverage offsetting a longer maturity).

Aid is delivered directly to the ultimate recipients, rather than the banks themselves

The maximum bank loan covered by such subsidized interest rates corresponds to the one applicable to State guarantees. The reduced interest rates may be applied for a period of six years. Again, the loan may relate to both investment and working capital needs. Different from guarantees, there is no "90%-/30%-rule" which would limit the State exposure.

4. Safeguards for Banks

The Temporary Framework underlines that, if Member States decide to channel aid to the real economy via banks, this is a direct aid to the banks' customers, not to the banks themselves. Moreover, special guidance is provided on how to minimize any undue residual aid to banks and to make sure that the aid is passed on, to the largest extent possible, to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates.

Marketable risk is defined as commercial and political risks on public and non-public debtors with a maximum risk period of less than two years

Direct aid to banks to compensate losses resulting directly from the COVID-19 outbreak will not be assessed under this temporary framework, but rather the separate exception under Article 107(2)(b).

5. Short-term export credit insurance

The Temporary Framework introduces additional flexibility on how to demonstrate that certain countries are not marketable risks, thereby enabling short-term export credit insurance to be provided by the State where needed.

Member States can evidence the non-marketability of the risk if one of the following two conditions is met:

- A large well-known international private export credit insurer and a

national credit insurer produce evidence of the unavailability of such cover
- At least four well-established exporters in the Member State produce evidence of refusal of cover from insurers for specific operations.

Financial measures towards the mitigation of COVID-19 coronavirus effects adopted by Greek State

Under a series of acts of legislative character, in accordance with the requirements of EU Law, a package of measures has been introduced across the public and private sectors in order to curb harmful coronavirus crisis implications in society, limit the losses of jobs and incomes and promote the stability of the financial system. Adopting the exact wording of the text, the principal objectives of the government, except for the principal aim to stem COVID-19 coronavirus spread and to protect public health, consist of "securing the support of society and of entrepreneurship, assuring the smooth functioning of the market and public administration, as well as protecting the national and union borders". In support of these goals, the Greek government has introduced several measures that are, schematically, based on four pillars: i) measures to prevent the spread of coronavirus ; ii) initiatives to strengthen the national public health system ; iii) initiatives to support society, entrepreneurship and public finances through stimulating liquidity and safeguarding employment; iv) arrangements addressing the urgent needs of Public Administration.

Package of measures securing the support of society and of entrepreneurship, assuring the smooth functioning of the market and public administration, as well as protecting the national and EU borders

The introduction of measures of purely economic nature was carried out in a second stage. Initial aim was to contain COVID-19 coronavirus spread. The complete list of measures is provided at the subsequent Acts of Legislative Character, published on 11th and 20th of March. It should be underlined at this point that European guidelines in this field are important considering that these state aid measures, included in the Temporary Framework, complement other possibilities of the Member States to mitigate the socio-economic impact of the outbreak of COVID-19. The most important, inter alia, financial measures, taken by the Greek State, include:

1. Measures for businesses

The Greek government has provided suspension of tax payments and social security contributions. The measures are strictly for businesses – and employees of businesses – belonging to the sectors affected by the outbreak and spread of COVID-19 coronavirus. The measures are horizontal, as they apply to all businesses with specific Activity Code Number (CAD). However, in the case any company wishes to pay the above amounts to the Tax Administration at the scheduled date, then a 25% discount is provided.

Horizontal measures applying to all businesses with specific Activity Code Number (CAD)

At business financial level, the deferment of instalment payments to Banks is authorized for businesses on the condition that they are consistent and reliable. Furthermore, a repayment financial framework, in the form of a repayable advance, with an extended repayment period and a grace period will be granted for all businesses severely affected by the emergence and spread of coronavirus, amounting to 1 billion Euro. In a similar vein and in order to ensure liquidity, the Greek State enables the affected companies to benefit from interest rate subsidies on loans and bank loan guarantees.

2. Support for employees and unemployed citizens

All employees with contract of employment temporarily suspended due to suspension of business operation, after state mandate, will receive compensation of 800 euros from the state budget in the beginning of April. This measure applies to 500.000 employees and the cost is estimated at 400 million euros.

The State fully covers the insurance, pension and health rights of employees and their social security contributions on the basis of their total nominal wages, for 45 days. At the same time, for the afflicted businesses' employees, the payment of tax liabilities for March is suspended. Alternatively, a 25% discount is provided on their established debts to the Tax Administration or on their instalments amount in the case of arrear settlement, on the condition they proceed on their payment within the time limit.

Regarding debts owed to banking institutions, the suspension of loan debt payments to banks for reliable borrowers is provided. The Greek government has also ensured the payment of the Easter Bonus to all employees of the private sector and has guaranteed safeguarding of employment rights, even in cases where the suspension of their employment contract is implemented. Technically, there is an express prohibition of dismissal of employees in businesses, whose activity is suspended by order of a public authority.

Suspension of loan debt payments to banks for reliable borrowers

Finally, concerning unemployed people, a two months further extension is provided for the eligibility period of regular unemployment allowance, compensation for the long-term unemployed and the unemployment benefit for self-employed and freelancers, to all those whose relative entitlement ends on 31st March. Additionally, a compensation of € 800 is prescribed for those who voluntarily retire or are fired between 1/3/2020 and 20/3/2020, provided they do not receive unemployment benefit.

3. Measures concerning freelancers, self-employed and sole proprietors

For self-employed and individual businesses operating in sectors with strong decline in economic activity due to the emergence and spread of COVID-19 coronavirus, all tax liabilities, payable in March, are deferred. Furthermore, the suspension of instalment payment of active arrangements is provided – regardless of the provisions governing them – whose obligation is due to expire between March 2020 and May 31, 2020. These debts and adjustments are halted and will commence on 1st of June 2020.

The suspension of payment of insurance contributions for freelancers and self-employed is also envisaged, for the months of February and March, without interest and surcharges. Otherwise, for those who proceed to pay current social security contributions for February and March 2020 on the scheduled date, a 25% discount is provided.

All tax liabilities, payable in March, are deferred

Similar to what was mentioned above for employees, regarding affected self-employed, freelancers and sole proprietors a financial aid will be given in early April, for the period between March 15 and April 30.
Finally, in the specific cases of disciplines such as economists and accountants, engineers, lawyers, doctors, educators and researchers, the funding of special training programs and support for adaptation to the new digital requirements is provided in order to promote and extend the distance vocational activity.

4. VAT Reduction

The reduction of VAT percentage from 24% to 6% is foreseen, on products necessary to protect against coronavirus or to prevent its transmission.

5. **Intervention in real estate market.**

Specifically, for companies which are obliged to cease or suspend their activity because of the spread of coronavirus, the payment of 60% of the rent of the commercial property is provided, for the period of March and April. The same arrangement is implemented to employees of the enterprises, which compulsorily cease their activity due to the spread of the coronavirus, and whose employment contract is suspended, under the condition that this is their first and main residence. At the same time, however, for owners of real estate in the aforementioned cases, the suspension, for four months, of their tax liabilities and of their established debts payment is stipulated.

Payment of 60% of the rent of the commercial property is provided, for the period of March and April

Conclusions

Many Member States have already announced support measures for the real economy in order to reduce the economic impact of the COVID-19 outbreak. Concerning the practical application of the 2020 Temporary Framework, it shall be underlined that Member Stats have low flexibility in handling these rules and that there is very little room for negotiation. As far as the "pricing", as well as the terms and conditions of a state guarantee or a loan are concerned, Member States have to comply with the somewhat rigid and narrow requirements of the Temporary Framework and the respective national scheme. Otherwise, they risk that the measure is not in line with the scheme and the Framework, which could render the measure illegal.

In addition to the 2020 Temporary Framework, the European Commission is preparing to respond rapidly to any notifications by Member States of state aid relating to the COVID-19 outbreak. The Commission has also set out a number of options available to Member States that fall outside the EU State Aid regime and can be implemented without involvement of the Commission, such as wage subsidies, suspension of payments of corporate and value-added taxes or social welfare contributions, or financial support directly to consumers for cancelled services or tickets not reimbursed by the concerned operators.

European Commission is preparing to respond rapidly to any notifications by Member States of state aid relating to the COVID-19 outbreak

The 2020 Temporary Framework aims to support companies, which were not in difficulty before the crisis, but entered in difficulty thereafter because of the COVID-19 outbreak. However, if an undertaking has fundamental difficulties, the European Commission's Rescue and Restructuring Guidelines from 2014 ("the R&R Guidelines") provide a legal basis on which the EU Commission can approve state aid to firms in difficulties. There are basically two types of aid which can be authorized on this basis:

- Rescue aid is intended to provide (only) short term repayable finance (six months). Given the limited admissible time for the use of rescue aid, it should only consist of measures, which are easily reversible, like a loan or a guarantee.
- Restructuring aid is the second type of aid covered by the R&R guidelines. It provides a long term injection of finance on non-commercial terms. The Commission approves restructuring aid only if it is (a) based on a comprehensive restructuring plan, (b) the aid is kept to the minimum necessary while the aid recipient provides an "own contribution", and (c) any distortions of competition resulting from the aid are "compensated" by measures of the firm concerned (divestments and other measures).

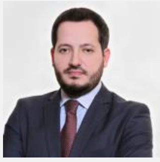
Synergies between the 2020 Temporary Framework and the 2014 R&R Guidelines, providing the legal basis on which the EU Commission can approve state aid to firms in difficulties

The R&R track is, of course, more painful and time-consuming than the "quick-fix" solutions under the Temporary Framework.

TASK FORCE COVID

Metaxas & Associates Law Firm has set up an in-house **Task Force Covid** to constantly monitor the evolving of legal issues in the regions affected by the Coronavirus and is at your entire disposal to support you in defining, drafting and implementing the most advisable strategies to limit the impact of the spread of the Coronavirus on the operations of your business and the management of your existing commercial relations.

For further information and targeted legal advice you may contact:



Stathis Kakounis
Partner
kakounis@metaxaslaw. gr

Ioannis Floros
Senior Associate
floros@metaxaslaw.gr

METAXAS & ASSOCIATES
ATTORNEYS AT LAW

154 Asklipiou Str.
114 71 Athens, Greece
Tel.: +30 210 33 90 748
Fax.: +30 210 33 90 749
E-mail: *info@metaxaslaw.com*