

NON-PAPER

Liquidity support and other possibilities to support undertakings under the COVID-19 Temporary Framework beyond 30 June 2022

- update -

In response to the COVID-19 outbreak, **the Commission has promptly adopted and amended several times a Temporary Framework¹** for State aid measures to enable Member States to use the flexibility provided for by State aid rules and effectively support affected undertakings during the pandemic.

The latest amendment of the Temporary Framework in November 2021 was adopted also with the objective to **enable a progressive phase-out of crisis measures, while avoiding potential cliff-edge effects**. The COVID-19 Temporary Framework has proven to be a very useful tool to enable Member States to support the economy quickly, but also sustainably. At the same time, it is important that support under this framework remains limited to what is necessary to remedy the serious disturbance of the economy due to the COVID-19 pandemic – and thus remains limited in time. In view of the upcoming phase-out of some crisis measures under the COVID-19 Temporary Framework by 30 June 2022, the overview below highlights the main possibilities available for Member States to avoid a disruptive end of support to beneficiaries in need of support linked to the COVID-19 pandemic.²

Several tools remain available even after 30 June 2022

- While the main elements of sections 3.1 to 3.12 are about to phase out by 30 June 2022, several options exist to provide support also after this date. In particular, **investment support pursuant to section 3.13 is available until 31 December 2022** and **solvency support pursuant to section 3.14 until 31 December 2023**.

Liquidity support does not need to be repaid immediately

- Liquidity support granted under the COVID-19 Temporary Framework **will not be suddenly cut-off on 30 June 2022**, if the aid is granted based on an approved scheme before that date:
 - Under the COVID-19 Temporary Framework, Member States can grant **liquidity support in the form of State guarantees and subsidised loans with a maturity of up to six years**. The Commission has published information on how to modulate guarantee premiums and coverage with the duration of the guarantee, which may thus reach **up to eight years**.³² This modulation

¹ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

² In this context it should be noted that the Commission has adopted on 23 March 2022 a Communication for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ C 131I, 24.3.2022, p. 1. Support under this new Temporary Crisis Framework may in principle be cumulated with support granted under the COVID-19 Temporary Framework.

³ Summary of case practice on modulation under point 25(b) of the Temporary Framework, available at:

applies also in the case of subsidised loans. This means that, as long as the State guarantee or subsidised loan is granted before the expiry of the COVID-19 Temporary Framework, its maturity can extend up to eight years after its granting, provided such a modulation of duration according to point 25b and 27b of the COVID-19 Temporary Framework is compensated with an increase of the guarantee premium or credit risk margin starting from the first year.

- Furthermore, the COVID-19 Temporary Framework enables Member States to grant liquidity support in the form of **State guarantees and subsidised loans for an even longer period of time**, provided that the relevant aid ceilings and conditions for limited amounts of aid (section 3.1) and support for uncovered fixed costs (section 3.12) are met (and the aid is granted before the expiry of the Temporary Framework).
- The Temporary Framework also enables Member States to grant **guarantees on newly issued subordinated loans or provide subordinated loans** to undertakings with favourable pricing up to a maximum loan amount per beneficiary. The aid must be granted before the expiry of the Temporary Framework, and the maturity of the subordinated loans may be **up to eight years** according to the provisions mentioned above on modulation, combined with the mark-up for subordinated loans as applicable pursuant to point 25bis (for guarantees) and 27bis (for subordinated loans) respectively.
- In this context it should also be recalled that the COVID-19 Temporary Framework refers to maximum loan amounts but **does not prescribe a certain repayment schedule**. This implies that loans with a regular repayment scheme are equally acceptable as are so-called “bullet loans”, where the full loan principal has to be repaid only at the end of the duration.
- In addition, the Commission has also accepted so called “**grace periods**” for interest payments, **if the accrued interest is capitalised accordingly** as of day one (at least at the rates of the applicable section of the COVID-19 Temporary Framework) and added to the outstanding loan principal.⁴ Any such option may not result in exceeding the applicable maximum aid amounts.
- In principle, comparable flexibility regarding repayment schedules could also be considered for participations or hybrid loans granted under **section 3.11** if provided for in the national scheme as approved: the COVID-19 Temporary Framework does not provide for any specific timeline in this respect. However, pursuant to section 3.11.7 of the COVID-19 Temporary Framework, an **exit strategy** must be prepared for certain interventions that has to be endorsed by the Member State and submitted to the Commission **within 12 month after the aid is granted**. Within these limits, changes to the repayment schedule and potentially also grace periods for interest payments could be possible if deferred interests are capitalised and priced in line with the COVID-19 Temporary Framework requirements.

Conversion and loan restructuring options are available until 30 June 2023

- Member States have in addition the following options available to **convert repayable advances, guarantees, loans or other repayable instruments into grants until 30 June 2023**, provided this is

https://ec.europa.eu/competition-policy/system/files/2021-03/summary_of_case_practice_on_modulation_under_point_25%28b%29_of_TF.pdf

⁴ See for example State aid case SA.64415 (2021/N) – Slovakia COVID-19: State aid scheme to safeguard liquidity for travel agencies, Commission Decision of 9.9.2021, C(2021) 6698 final.

provided for in the applicable and approved national legal basis:

- Repayable instruments (e.g., repayable advances, guarantees and loans) granted under a scheme based on any section of the Temporary Framework may be **converted into direct grants under section 3.1 until 30 June 2023**, provided such a conversion is based on objective criteria and does not lead to exceeding the aid ceilings for limited amounts of aid under section 3.1 as specified in **point 23ter**. Such a possibility to convert **needs to be provided for in the applicable and approved national scheme** and would allow under specific conditions to write-off parts of a loan granted if all the applicable conditions of section 3.1 are complied with.
- A comparable conversion option exists based on **point 87bis**, where beneficiaries qualify for support pursuant to section 3.12. In as far as provided for under the applicable and approved national scheme, Member States may convert repayable advances, guarantees, loans or other repayable instruments granted under a scheme based on any section of the COVID-19 Temporary Framework into direct grants by 30 June 2023 applying the aid ceilings under section 3.12 (support for uncovered fixed costs) provided the other conditions of that section are met.
- In addition to conversion, the COVID-19 Temporary Framework also provides the possibility for approved national schemes to include options for **restructuring of repayable instruments granted under section 3.1, 3.3, or 3.12** where required **until 30 June 2023**. Pursuant to **point 27ter** of the Temporary Framework, such restructuring will be compatible provided that it is based on sound economic analysis of the specific situation of the individual case as part of the ordinary prudential practices, respects the conditions of the applicable section especially in terms of minimum credit risk margins and maximum duration, and does not lead to an increase in the initially granted loan amount.⁵

General State aid principles provide additional flexibility

- Furthermore, Member States may opt for restructuring guarantees, loans or other repayable instruments that do not amount to granting new aid, in which case a notification is not needed. On the one hand, the Commission has already explained that following option exists:
 - **Member States may wish to allow a prolongation of guarantees** granted under sections 3.1 on limited amounts of aid, 3.3 on subsidized loans, or 3.12 on support for uncovered fixed costs, even after the expiry of the Temporary Framework, as long as this is stipulated in the initial guarantee contract between the State and the bank, the total duration of the guarantee does not exceed eight years and the guarantee is adequately re-priced. Where those conditions do not leave any discretion to the Member State's authorities when the duration of the guarantee is extended, this would not qualify as a granting of new aid and may accordingly be used also after the dates specified in the Temporary Framework as explained in recital (12) of the sixth amendment⁶. This means in practice that if the borrower cannot repay the loan within the initial

⁵ See for example State aid cases SA.100743 (2021/N) – Germany COVID-19: Modification, Commission Decision of 21.12.2021 C(2021) 9879 final (concerning repayable instruments, see recitals 5c and 20), SA.100998 (2021/N) – Malta COVID-19: Reintroduction, Commission Decision of 12.1.2022 C(2022) 255 final (concerning guarantees, see recitals 9c and 21b) or SA.101099 SA.101099 (2021/N) – Slovenia COVID-19: Prolongation and amendment, Commission Decision of 12.1.2022, C(2022) 252 final (concerning loans, see recitals 8 and 18).

⁶ Communication from the Commission on the sixth Amendment to the Temporary Framework for State aid

maturity, it can ask the bank to extend the maturity and the State guarantee is extended automatically to match the revised maturity. This allows the restructuring of existing guaranteed loans also after the expiry of the Temporary Framework provided the national legal basis as approved by the Commission before 30 June 2022 provides for such a possibility. If **Member States want to use this possibility, they should also ensure that the guarantee contracts as concluded at the latest on June 2022 between the State and the credit or financial institutions explicitly include such a possibility** and that the **final beneficiaries have been informed** of this possibility.

- In addition, Member States may also act as market operators in specific situations and under certain conditions:
 - The restructuring of publically guaranteed loans may occur during the agreed duration and **following the guarantee event in the context of judicial or similar proceedings**.⁷ For example, if there is a credit event and the guarantee is called by the bank, the final settlement and payment of that guarantee may be extended beyond the initial duration of the guaranteed loan (e.g., six years) upon decision of a judicial authority in preventive or insolvency proceedings, or proceedings led under the auspices of another independent body with similar or stronger safeguards, in order to ensure that the State behaves as a market creditor.
 - The fact that a Member State has an economic exposure resulting from State aid granted under the COVID-19 Temporary Framework does not exclude that the **private operator principle** can be applicable to subsequent actions taken by that Member State in support of a specific undertaking. Any such action needs to be clearly independent from the initial granting and needs to be based solely on the intention to protect the Member State's own economic interests and based on a diligent case-by-case assessment to be conducted by the involved financial institutions and the specific Member State.⁸ In particular, the Commission would consider that in a situation where all creditors of a specific borrower accept a restructuring of outstanding debt on equal terms ("pari-passu"), an equal participation of the State would not amount to granting of new aid.

Additional options available under other legal bases

- On the basis of Article 107(3)(c) TFEU and as further specified in the **Rescue and Restructuring State aid Guidelines**⁹, Member States can notify to the Commission aid schemes to meet acute liquidity

measures to support the economy in the current COVID-19 outbreak, OJ C 473, 24.11.2021, p. 1.

⁷ The relevant credit event must be clearly defined at the moment of granting (or in case of a change in any case before the expiry of the COVID-19 Temporary Framework) but does not need to be necessarily limited to court restructurings, but could also be voluntary (e.g. in the form of a „médiation du crédit“) based on the following safeguards: (i) a credit event on a loan would lead to a credit event for all the other loans of the same borrower, from a prudential perspective (i.e. higher provisioning for the bank) and (ii) the involved credit institution has a fiduciary duty towards the State, i.e. they have to manage the guaranteed loan diligently. The State can bring the bank in front of a judge if those fiduciary duties are not complied with.

⁸ See judgment of the Court in case C-579/16 P - Commission v FIH Holding and FIH Erhvervsbank, EU:C:2018:159, recital 73; see also the see also recent Opinion of AG Ćapeta in joined cases C-331/20 P and C-343/20 P – Voletea, EasyJet v European Commission, EU:C:2022:283, recitals 84 to 91.

⁹ Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249, 31.7.2014, p.1.

needs and support undertakings in difficulty, also due to or aggravated by the COVID-19 outbreak. Such a possibility – if available in the respective Member State based on an approved scheme – can provide flexibility in particular to support SMEs, also avoiding individual notifications under specific conditions.

- On the basis of **Article 107(2)(b) TFEU**, aid to make good the damage caused by natural disasters or exceptional occurrences is also compatible with the internal market. Member States may accordingly notify measures to make good damages caused directly by restrictive measures taken in order to contain the COVID-19 pandemic. As explained in point 15bis of the COVID-19 Temporary Framework, such damage needs to be caused directly by restrictive measures precluding the beneficiary, de jure or de facto, from operating its economic activity or a specific and severable part of its activity. While no specific end date applies for such notifications, the aid should be granted within a reasonably short time as of the occurrence of the damage, so as to make sure that there is a causal link with the exceptional occurrence.