

Informative Note

Amendment of the European Commission's Temporary Framework for State aid and recapitalisation or nationalisation plans

20th May 2020

On 20th March 2020, in view of the exceptional nature of the situation caused by the COVID-19 pandemic, a communication from the European Commission was published in the Official Journal of the European Union setting out the so-called [Temporary Framework for State aid measures to support the economy in the context of the current COVID-19 outbreak](#) (hereinafter the "**Temporary Framework**"), the aim of which is to regulate and establish the criteria and measures for State aid aimed at helping the European economy and its strategic sectors to recover.

The creation of the Temporary Framework, which was already analysed in a [previous note by Andersen Tax & Legal](#), contained a set of State measures to assist undertakings which the Commission would consider compatible with Article 107(3)(b) of the Treaty on the Functioning of the European Union ("TFEU"), which empowers the Commission to authorise aid measures to remedy a 'serious disruption in the economy of a Member State'. The types of aid include direct subsidies, tax concessions or public loan guarantees, which are intended to ensure liquidity and access to finance for firms.

After that, on 4th April 2020, [the Commission decided to amend the Temporary Framework](#) in order to supplement the measures included in it. The modifications introduced by the Commission can be divided into two large blocks: the first block includes those State aid measures whose objective is to accelerate or extend acts specifically related to the fight against the pandemic, such as research projects, the development of certain infrastructure or the marketing of health care products; the second block includes those measures aimed at guaranteeing and preserving employment, establishing conditions and requirements for Member States to be able to grant aid such as the deferment of the payment of taxes and contributions or subsidies of a salary nature.

More recently, on 8th May 2020, [the Commission published a second amendment to the Temporary Framework](#), with new measures and requirements to be met by Member States in relation to recapitalisation or nationalisation plans of companies or individual aid measures granted.

Thus, by virtue of the latter amendment, the Commission will request the separate notification of State aid requested for undertakings above the threshold of EUR 250 million, for individual assessment. In other words, in practice, the Commission has set at EUR 250 million the threshold above which Member States must notify the Commission of such acts for subsequent approval.

Other measures contained in this second amendment include the limitation and control of the nationalization of companies, establishing certain requirements for its execution such as: (i) that it is absolutely necessary for the survival of the company; (ii) that the recapitalization or nationalization does not serve to improve the position that the company had in relation to its share capital and; (iii) that the Member State cannot remain in the company for more than six years.



It is also worth noting this second amendment made to the Temporary Framework by the Commission:

- The disappearance of management bonuses until the recapitalised or assisted company has returned at least 75% of the public capital.
- The ban of recapitalised companies paying dividends to shareholders until the public shareholding has ended.
- The ban of recapitalised companies from using State aid to encourage or support the economic activity of other companies already in economic difficulties prior to December 2019.

In conclusion, given the current situation caused by COVID-19, and in view of the impact that the pandemic is causing in the European economy, which will also have consequences in the mid and long term, the European Commission continues to establish and modify the State aid regime, in order to guarantee, on the one hand, its flexibility, and, on the other, its compliance with the TFEU.

In any case, and given the complexity of the matter, it is important that any company or entity that is interested in applying for any type of aid that falls within this Temporary Framework has the advice of an expert in this area, since, once the emergency situation has ended, the European Commission could investigate those subsidies granted that have not respected the established limitations and requirements.

We hope the information is useful and of your interest. At Andersen Tax & Legal we have created a multidisciplinary team to deal with all the questions that may arise in this area or in relation to the COVID-19 and all the firm's professionals are at your disposal.

You can access the Communication from the European Commission establishing the Temporary Framework [here](#).

You can also access the Communication from the European Commission setting out the second amendment to the Temporary Framework [here](#).

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