

Informative Note

On developments in State aid in the context of the COVID-19 emergency

26rd March 2020

Regarding Royal Decree-Law 8/2020 on urgent extraordinary measures to deal with the economic and social impact of COVID-19

In recent days, and given the exceptional situation caused by COVID-19, we have witnessed the approval of numerous measures of an economic nature by the Presidency of the Government with the aim, precisely, of trying to mitigate the effects caused by this situation.

In addition to the one we are all familiar with, "Royal Decree-Law 8/2020 of 17 March on urgent extraordinary measures to deal with the economic and social impact of COVID-19", the exceptional measures announced by the European Commission's Directorate-General for Competition in the field of competition law, and in particular with regard to the granting of State aid, cannot be ignored.

Firstly, it is important to remember that the European Commission is the body that supervises and authorises the granting of State aid and, as such, it is necessary for Member States to notify it of their decision to grant any type of aid prior to its granting, except for aid granted in the framework of European Commission decisions and certain exceptions. Thus, the absence of such notification when appropriate would imply the illegality of the aid. On the other hand, it is no less important to note that, in any event, the Commission retains the power to review any aid granted during a period of 10 years from the date on which it was granted in accordance with the provisions of Regulation 2015/1589, even if notification has been given, and it may, in this regard and in any event, declare such aid to be incompatible with the internal market. In both cases, the decision would entail the repayment of the amounts received together with the interest accrued.

Turning to COVID-19, and in accordance with Article 107 of the Treaty on the Functioning of the European Union (TFEU), certain aid intended to make good the damage caused by natural disasters or exceptional occurrences, such as COVID-19, is declared to be compatible with the internal market.

As a result, the European authority has obviously not ignored the serious situation in which the Member States find themselves, and has even made space available on its website (Vid [European Commission in terms of State aid](#)) in relation to COVID-19. In short, in order to give the Member States - or at least to try and give them some breathing space, the Commission has sped up the process of authorising aid, an example of which is the case of Denmark, where aid has been authorised in just 24 hours to compensate for the damage caused by the cancellation of major public events. Or that of Spain, since the Commission [has just authorised the range of public guarantees](#) valued at 20 billion for SMEs and the self-employed to alleviate the effects of the crisis caused by the coronavirus. Similarly, an emergency telephone line has been opened so that the national authorities can contact the Commission immediately.

Another important measure is the creation of a [temporary framework for state aid](#) to support the economy in the face of the COVID-19 pandemic. As stated by the Executive Vice-President of the European Commission, Ms. Margrethe Vestager, this Framework will enable Member States to use the



rules on State aid flexibly in order to protect the economy in these exceptional circumstances. Thus, the Temporary Framework, in force until 31 December 2020, provides for five types of aid based on Article 107.3.b of the TFEU:

- Direct subsidies, advances and selective tax benefits with a limit of up to 800,000 euros per company;
- A range of state guarantees for financial loans granted to companies;
- Low-interest public loans, also known as subsidies;
- Safeguards for banking and financial institutions, provided that the Member State has decided to channel the aid to the real economy through these institutions; and
- Short-term operating credit insurance, introducing greater flexibility for States to demonstrate that certain countries present non-marketable risks.

In any case, and given the complexity of the matter, it is important that, before accepting any type of aid, the advice of an expert in this field be available, since, once the emergency situation has ended, the European Commission could investigate some of the aid granted, pursuant to the provisions of the aforementioned Regulation 2015/1589.

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

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