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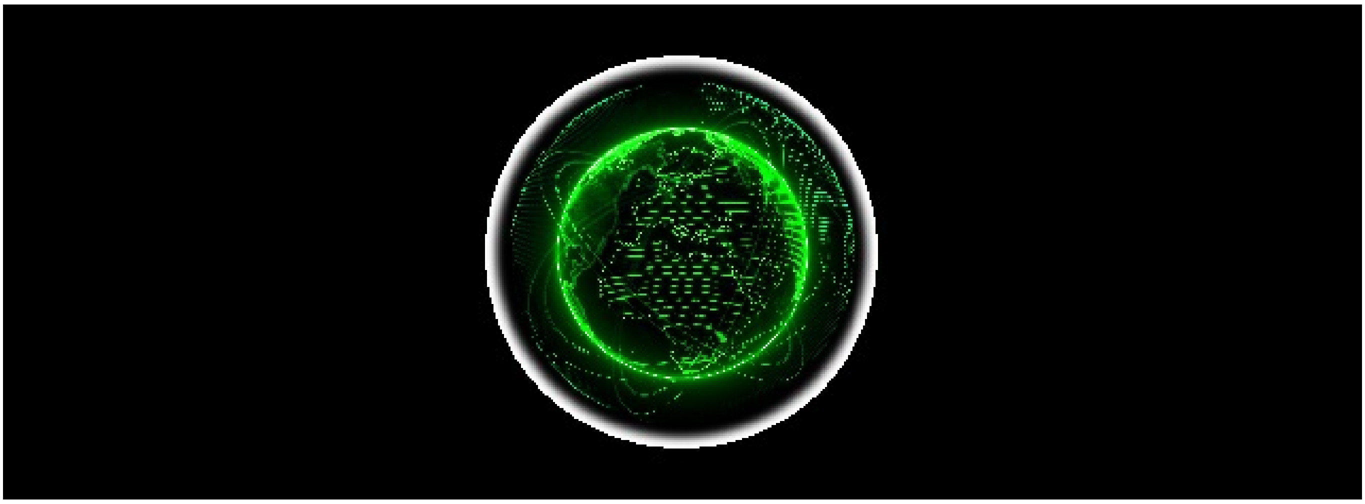

# LEGAL ALERT:

# COMPETITION LAW

# SPANISH GOVERNMENT MEASURES ON COVID-19

# EUROPEAN COMMISSION CONTINUES TO SHOW MUCH-NEEDED FLEXIBILITY ON STATE AID RULES

## SPANISH GOVERNMENT MOST RELEVANT MEASURES SO FAR

The Spanish government has approved a number of measures to alleviate the economic and social impact of COVID-19. Depending on the structuring and features of these measures, which are further described below, they may constitute State aid, thereby potentially requiring approval from the European Commission in order to be considered compatible with the applicable State aid regulations.

- On 10 March 2020, the Spanish government approved a first round of economic and social measures, mainly aimed at protecting particularly vulnerable groups from evictions and other health-related labour measures (RDL 6/2020, of 10 March[1]).

- Further measures were adopted on 12 March 2020, which included, among others, measures to support the tourism sector (in the form of extension of credit facilities and guarantees), tax liability deferrals and postponement of credit repayment obligations for SMEs (RDL 7/2020, of 12 March[2]).

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[1] https://www.boe.es/boe/dias/2020/03/11/pdfs/BOE-A-2020-3434.pdf

[2] https://www.boe.es/boe/dias/2020/03/13/pdfs/BOE-A-2020-3580.pdf

- On 14 March 2020, the alarm state was declared by the government. Confinement and business closure measures on a nation-wide basis were adopted, and were further strengthened on 17 March (RD 463/2020[3] and RD 465/2020[4]). All deadlines affecting ongoing proceedings before the Spanish competition authority and the Spanish courts were suspended.

- On 18 March 2020, the Spanish government approved an extensive package of urgent measures to deal with the economic and social impact of COVID-19 (RDL 8/2020[5]). By way of illustration, some measures which will likely require a detailed assessment from a State aid perspective are as follows:

    - State guarantees and securities for an amount of up to EUR 100,000 million to companies and self-employed individuals in order to secure access to bank loans in the event of cash flow distress.
    - Extension of the Official Credit Institute's (ICO) levels of indebtedness for an additional amount of EUR 10,000 million to facilitate additional liquidity and cash flow to affected companies, particularly SMEs and self-employed individuals.
    - Credit lines for an amount of up to EUR 2,000 million to support SMEs, self-employed individuals and non-listed companies in their internationalisation process.
    - Financing for an amount of up to EUR 200 million to support SMEs go through digitalisation processes and, in particular, to implement remote working solutions.
    - Adjustments to certain economic terms of concession agreements entered into with public bodies.
    - Adjustments to repayment terms in relation to credits granted to certain companies in the agricultural sector.
    - Other extraordinary financing measures to support scientific and R&D activities in relation to COVID-19.

**THE COMMISSION'S LATEST STEP TO HELPING GOVERNMENTS WITH COVID-19: NEW TEMPORARY FRAMEWORK ON STATE AID**

On 19 March 2020, the European Commission adopted the much-anticipated Temporary Framework for State Aid measures to support the economy in the current COVID-19 outbreak.

The Temporary Framework clarifies under which conditions the European Commission will approve certain types of state aid measures that Member States take. These measures aim to ensure that sufficient liquidity remains available to businesses, and to preserve the continuity of economic activity during and after the COVID-19 outbreak.

[3] https://www.boe.es/boe/dias/2020/03/14/pdfs/BOE-A-2020-3692.pdf
[4] https://www.boe.es/boe/dias/2020/03/18/pdfs/BOE-A-2020-3828.pdf
[5] https://www.boe.es/boe/dias/2020/03/18/pdfs/BOE-A-2020-3824.pdf

## A complement to other possibilities for Member States to lessen the impact of COVID-19, in line with state aid

The Temporary Framework does not replace the existing state aid instruments and other possibilities that state aid law allows for. These were explained in the [Communication on a Coordinated economic response to the COVID-19 outbreak], adopted by the Commission on 13 March 2020.

## Temporary relaxing of 'normal' state aid rules

The Temporary Framework is based on Article 107(3)(b) TFEU as the European Commission recognises that the entire European Union economy is experiencing a serious disturbance.

The Temporary Framework introduces a temporary relaxing of 'normal' state aid rules. It does not introduce any waiver of the obligation to notify the measures to the European Commission for approval. However, if the Member State measure meets the conditions laid down in the Temporary Framework, the European Commission will very swiftly approve the measure.

The Commission applies the Temporary Framework to all relevant notified measures from 19 March 2020 to 31 December 2020. However, the framework can be extended or reviewed at any time by the Commission in the wake of important competition policy or economic considerations.

## Which types of aid does the Temporary Framework provide for?

The Temporary Framework provides for five types of aid:

(i) Direct grants, repayable advances or tax advantages

This type of aid can be awarded only through a scheme. The amount of aid per company cannot exceed EUR 800,000. An important feature is that companies can be in difficulty when receiving this type of aid, as long as they were not in difficulty on 31 December 2019. This type of aid cannot be granted later than 31 December 2020.

(ii) Guarantees or loans

The Temporary Framework introduces a minimum level for guarantee premiums that is lower than allowed for under the regular guarantee scheme. The guarantee must be granted by 31 December 2020 at the latest.

For loans where maturity is beyond 31 December 2020, the Temporary Framework introduces three alternative loan principal amounts that cannot be exceeded. An exception is provided for loans with a maturity until 31 December 2020.

The recipients can be in difficulty when receiving this type of aid, as long as they were not in difficulty on 31 December 2019.

Guarantee duration and ceilings are also in place.

(iii) Subsidised interest rates for loans

The Temporary Framework introduces a minimum level for reduced interest rates. The loan contract must be signed by 31 December 2020 at the latest.

For loans where maturity is beyond 31 December 2020, the Temporary Framework introduces three alternative loan principal amounts that cannot be exceeded. An exception is provided for loans with a maturity until 31 December 2020.

The recipients can be in difficulty when receiving this type of aid, as long as they were not in difficulty on 31 December 2019.

(iv) Banks channelling aid to the real economy

In order to avoid any reluctance on the side of credit institutions or other financial institutions to be a conduit for the government aid, the Temporary Framework explicitly states that such aid will not be considered as aid to the credit institutions or other financial institutions. In order to minimize any potential impact on competition between the banks, the Commission requires that banks prove that there is a mechanism in place to ensure that the advantages are passed on to the companies.

Specifically with regard to SMEs, banks are not allowed to charge a guarantee fee when there is a legal obligation to extend the maturity of existing loans for SMEs.

(v) Short-term export credit insurance

As a deviation from the regular rules on short-term export credit insurance, the Temporary Framework creates additional flexibility for demonstrating that certain countries are not-marketable risk.

**CONCLUDING REMARKS**

Many of the measures announced or taken by the Spanish government are covered by the traditional set of state aid rules and regulations, or by the Temporary Framework adopted by the European Commission.

Care must be taken that when accepting any government support, business are certain that the support they receive is in line with the existing state aid rules. If not, they may be forced to refund the aid later on, increased by a recovery interest rate. Also, in the case of targeted rescue and restructuring aid granted to business that are struggling, most aid now will be accepted, but the real discussion will start later on, when the beneficiary, the government and the European Commission have to discuss compensatory measures, such as divestments, limiting growth, etc.

**WE CAN HELP**

At Deloitte Legal, an integrated team of state aid specialists, based in Madrid and in Brussels, assists governments and businesses in developing and assessing government support measures on compliance with state aid, and in having them approved by the European Commission.

In particular, we have built significant experience during the financial crisis in 2008/2009, where many financial institutions needed to be rescued by governments, and where many measures to support the economy suffering from the financial crisis were taken.

If you have any concerns or questions, feel free to contact us:


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