Department for Business, Energy & Industrial Strategy

State aid: Guidance on the Covid-19 Temporary Framework for UK Public Authorities

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Summary

1. This document is for Whitehall Subsidy Control Champions, Devolved Administrations and public aid granting authorities. It sets out the European Commission's (Commission) general approach on how State aid rules can support measures in the UK and within EU Member States to address the impacts of Covid-19. In particular, this document:

   a. Advises that the Commission has designated Covid-19 as an exceptional occurrence.
   b. Draws attention to the Temporary Framework[1] and Amendments to the Temporary Framework[2] which set out measures that can be used to remedy a serious disturbance in the economy.
   c. Explains action BEIS has taken; submitting a UK-wide State aid notification to the Commission for approval under the Temporary Framework, so that UK public authorities can grant aid as quickly and as flexibly as possible.
   d. Sets out compliance requirements for aid givers granting aid under the Covid-19 Temporary Framework (**Annex A**)
   e. Provides a template for aid recipients to confirm they have not received aid in excess of €800,000[3] and a declaration of their status as not being an undertaking in difficulty[4] prior to 31 December 2019 (**Annex B**).

State aid rules during the Transition Period

2. Although the United Kingdom left the European Union on 31 January 2020, under the terms of the Withdrawal Agreement given effect to through the European Union (Withdrawal) Act 2018[5], the UK has entered a Transition Period until 31 December 2020. During this Transition Period, the EU State aid rules continue to apply in the UK. Accordingly, any aid granted during the Transition Period must comply with those rules.

The European Commission's Approach to Covid-19 and State aid

3. The European Commission has taken two specific steps to respond to the Covid-19 pandemic. These are explained below.

[1] https://ec.europa.eu/competition/state_aid/what_is_new/sa_covid19_temporary-framework.pdf
[2] https://ec.europa.eu/competition/state_aid/what_is_new/sa_covid19_1st_amendment_temporary_framework_en.pdf
[3] Aid to agriculture and fisheries has lower rates of €120 000 per undertaking active in the fishery and aquaculture sector or €100 000 per undertaking active in the primary production of agricultural products
[4] Test for undertakings in difficulty is in Annex C
[5] As amended by the European Union (Withdrawal Agreement) Act 2020

Exceptional Occurrence

4. Under Article 107(2)(b) of the TFEU, aid to make good the damage caused by natural disasters or exceptional occurrences must be approved by the Commission. On 13 March 2020, **the Commission announced that it recognised Covid-19 is an exceptional occurrence.**

5. The Commission has highlighted the possibility of compensating undertakings in sectors that have been particularly hit by the outbreak (e.g. transport, tourism, culture, hospitality and retail) and/or organisers of cancelled events, for damages suffered due to, and directly caused by, the outbreak. Countries can notify such damage compensation measures for the Commission to assess them directly under Article 107(2)(b). Countries can even give compensation for the damages directly caused by the Covid-19 outbreak to undertakings that have received aid under the Rescue and Restructuring Guidelines. Aid meeting all of three criteria will be approved:

    a. Direct causal link between Covid-19 and the scheme; and
    b. Aid strictly limited to compensating only for the damages caused; and
    c. No cumulation with other aid for the same costs.

Remedying a serious disturbance in the economy (Temporary Framework)

6. Under Article 107(3)(b) of the TFEU, the Commission *may* approve aid to remedy a serious disturbance in the economy (i.e. the Commission has discretion). In order to assist countries in designing State aid compliant schemes to manage the impact of Covid-19, the Commission published a Temporary Framework[6] on 19 March 2020. The Commission updated the Temporary Framework to provide further flexibilities, and this was adopted on 3 April 2020[7].

7. The Temporary Framework sets out the compatibility conditions that the Commission will apply in principle to aid granted under Article 107(3)(b). **For the relevant flexibilities in the Temporary Framework, see details of the UK-wide umbrella approval in paragraph 12 below.** Potential aid grantors should be aware that the Commission will be scrutinising schemes closely to ensure that they meet all the relevant criteria.

8. Aid granted under section 3.1 of the Temporary Framework may be cumulated either with aid under section 3.2 or section 3.3, and with aid granted under section 3.5, section 3.6, section 3.7, section 3.8, section 3.9 and section 3.10.

[6] https://ec.europa.eu/competition/state_aid/what_is_new/sa_covid19_temporary-framework.pdf
[7] https://ec.europa.eu/competition/state_aid/what_is_new/sa_covid19_1st_amendment_temporary_framework_en.pdf

9. Article 50 of the General Block Exemption Regulation (GBER)[8], dealing with schemes to make good the damage caused by certain natural disasters, is not applicable to Covid-19. The types of natural disaster are specified, and an outbreak of disease is not included.

10. It should be noted that the adoption of the Temporary Framework is not a signal that the Commission has suspended or relaxed the State aid rules due to the Covid-19 outbreak. Rather, the Temporary Framework reflects the Commission's recognition of the urgency needed in supporting citizens, businesses and companies facing economic difficulties as a consequence of the Covid-19 outbreak and has stated it will work *"to ensure that possible national support measures to tackle the outbreak of the Covid-19 outbreak can be put in place in a timely manner'.*[9]

Action by the UK Government

11. The UK Government has prepared a package of both aided measures such as the Coronavirus Business Interruption Loan Scheme (CBILS)[10] to support SMEs, and general measures like the job retention scheme that do not constitute State aid as they are measures available to all businesses: Other support measures include[11]:

- A 12-month business rates holiday for all retail, hospitality, leisure and nursery businesses in England
- CIBLS offering loans of up to £5 million for SMEs through the British Business Bank (this has been notified and approved by the Commission under the Temporary Framework)
- The Coronavirus Job Retention Scheme
- Deferring VAT and Income Tax payments
- Self-employment Income Support Scheme
- Statutory Sick Pay relief package for small and medium sized businesses (SMEs).

UK-wide 'umbrella' measure: the Covid-19 Temporary Framework for UK Authorities

12. Additionally, the Commission has approved the Department for Business, Energy and Industrial Strategy's (BEIS) UK-wide State aid notification under the Temporary Framework to support businesses affected by the Coronavirus outbreak, named the '*Covid-19 Temporary Framework for UK Author*ities'[12]. This 'umbrella' measure provides for:

[8] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014R0651-20170710
[9] https://ec.europa.eu/commission/presscorner/detail/ga/ip_20_459
[10] https://www.british-business-bank.co.uk/ourpartners/coronavirus-business-interruption-loan-scheme-cbils-2/for-businesses-and-advisors/
[11] https://www.businesssupport.gov.uk/
[12] https://ec.europa.eu/commission/presscorner/detail/en/IP_20_603

a. Direct grants, repayable advances, and tax advantages of up to €800,000[13] to individual companies[14]
b. Aid in the form of guarantees on loans
c. Aid in the form of subsidised interest rates on loans
d. Aid in the form of guarantees and loans channelled through credit institutions or other financial institutions
e. Short-term export credit insurance
f. Aid for Covid-19 relevant research and development
g. Aid for testing and upgrading infrastructures
h. Investment aid for the production of Covid-19 relevant products[15].

13. Under this umbrella, aid givers need to ensure that cumulation conditions are respected across all UK measures under the Temporary Framework and across all granting authorities, as follows:

    a. Aid under section 3.2 and section 3.3 of the Temporary Framework (the loan and guarantee provisions) must not be cumulated if the aid is granted for the same underlying loan.
    b. The overall aided loan amount per undertaking must not exceed the thresholds set out in point 25(d) (grants) or 27(d) (guarantees) of the Temporary Framework.
    c. Aid granted under sections 3.6, 3.7 and 3.8 of the Temporary Framework (the Covid-19 R&D provisions) must not be cumulated if the aid concerns the same eligible costs.

14. As the aid grantor, **you are responsible** for:

    a. Providing aid recipients with support to ensure they **do not exceed the €800,000 support ceiling** under this measure, and
    b. Ensuring aid recipients were **not undertakings in difficulty** (within the definition of Article 2(18) of the General Block Exemption Regulation) on 31 December 2019 (**Annex C**).

15. **The template letter in Annex B** should be sent to the aid recipient and used to determine the value of any aid received by a beneficiary for measures that shelter under the UK Covid-19 Temporary Framework, to determine whether there is scope to give (further) aid.

[13] See footnote 3 for limits on aid to agriculture and fisheries.
[14] This Covid-19 grant allowance is in addition to the €200,000 de minimis aid awarded under and subject to the requirements under the De Minimis Regulations. For agriculture, de minimis threshold is €20,000 and for fisheries the de minimis threshold is €30,000.
[15] Note the UK umbrella scheme does not provide for targeted wage subsidies.

16. **We strongly encourage aid grantors to use the scope that the UK approval provides, so that support measures can be implemented as quickly as possible without the need for a further notification or approval.**

17. However, if aid grantors still consider there is a need for bespoke notification of a scheme going beyond the Temporary Framework, then please get in touch with the BEIS Subsidy Control Policy Unit by emailing sapt@beis.gov.uk as early as possible in order to discuss. This is so we can consider any State aid implications and the quickest, most efficient means of securing approval, including potentially how to package different support measures in a notification(s) to the Commission. Approval by the Commission will ensure we can grant aid, and firms can accept aid, without the risk of future challenge and potential clawback.

18. Any queries about the content of this note should also be directed to sapt@beis.gov.uk.

ANNEX A: Compliance checklist for aid granted under the Covid-19 Temporary Framework for UK Authorities

1. All conditions for aid granted[16] under the above measure are set out in the Temporary Framework and the decision letter from the Commission. A summary of those conditions are set out below. **As the aid administrator, you must ensure that all relevant conditions in the decision letter and temporary Framework are met.**

2. For aid awarded based on the Temporary Framework, the underlying nature of the activities that are being subsidised **must address the sudden shortage or unavailability of finance arising from the Coronavirus outbreak.**

3. Aid may be granted to undertakings that were not in difficulty (within the meaning of Article 2(18) of the General Block Exemption Regulation in **Annex C**) on 31 December 2019, but that faced difficulties or entered in difficulty thereafter as a result of the Covid-19 outbreak.[17]

4. The aid must be granted no later than 31 December 2020.

5. The aid should not exceed €800,000 per undertaking in the form of direct grants, repayable advances, tax or payments advantages. All figures used must be gross, that is, before any deduction of tax or other charge.

6. For undertakings in the agriculture and fisheries sector, the aid limits are lower: €120,000 per undertaking active in the fishery and aquaculture sector or €100,000 per undertaking active in the primary production of agricultural products. See paragraphs 22 and 23 of the Temporary Framework for more information on the limits and conditions for undertakings in the agricultural, fisheries and aquaculture sectors.

7. De minimis aid can be used in conjunction with the new category of aid. De minimis aid is €200,000 over a three-year financial period[18] and the conditions must be adhered to in the usual way (see chapter 4 of the State aid manual[19]).

[16] The point at which recipients receive or are legally entitled to receive the aid (whichever occurs first).
[17] If the undertaking was in difficulty prior to 31 December 2019 within the meaning of Article 2(18) of the General Block Exemption Regulation they may still be entitled to de minimis aid if they have received less than €200,000 in de minimis aid in the last three years and other conditions for de minimis aid are met. See chapter 4 of the State aid manual for further detail.
[18] De minimis aid limits for the agricultural and fisheries section are lower. More information can be found here - https://www.gov.uk/guidance/state-aid-for-agriculture-and-fisheries
[19] https://www.gov.uk/government/publications/state-aid-manual

8. Aid beneficiaries must be notified of the amount of aid they are receiving and should complete a declaration (template in **Annex C**) to confirm that the aid they are receiving will not breach the aid limits set out in paragraphs 5 and 6 above, and that they were not an undertaking in difficulty on 31 December 2019 .

9. For undertakings active in more than one sector to which different maximum amounts apply (for example in both agriculture and industrial activities), you must set out to the aid recipient that they should keep separate accounts to avoid exceeding ceiling limits and cross-subsidisation of aid across different sectors. See **Annex B** and paragraphs 22 and 23 in the Temporary Framework.

10. Clear and comprehensive records of aid awarded must be maintained by the aid giver to account for awards granted. This is in the event this measure is subject to a monitoring exercise. Retention of records will enable detailed questions from the Commission or UK authorities to be answered in a timely manner.

11. All individual aid awards granted under the Temporary Framework must be reported by the aid giver on the EU Commission's Transparency Aid Module (TAM) using the scheme number SA.56841. **We recommend this is done as soon as possible after the aid has been granted.**

12. When granting aid under the UK umbrella measure for the first time, the public authority granting - whether at local, central or regional government level - must immediately provide the BEIS subsidy control team with:

    a. The date the aid scheme was started
    b. The estimated scheme budget
    c. A brief description of the scheme (e.g. purpose, aid recipient etc.)

13. While the aid scheme is in operation, the public authority granting the aid should also confirm on a monthly basis that:

    a. Information about individual aid awards under the scheme is being uploaded onto TAM or set out plans for doing so.
    b. The scheme is still open and operating in a way that complies with the terms of the approval letter and the conditions set out in this Annex.

14. Emails should be sent to sapt@beis.gov.uk.

15. Following expiry of the UK Umbrella measure's approval, BEIS will ask public granting authorities to provide total amounts granted up to 31 December 2020. This is to enable the UK to meet its annual reporting obligations to the Commission.

16. The sanction for beneficiaries who have misreported any aid received under the Framework could be the recovery of the unlawful aid with interest.

17. Aid givers and SROs must ensure they have the capacity and resource to effectively manage the State aid compliance obligations on an ongoing basis for the duration of the measure's operation.

18. Aid givers should ensure they speak with their legal advisors when drafting grant agreements to ensure that State aid requirements are reflected.

ANNEX B: Template to send to beneficiaries of aid awarded based on the UK Covid-19 Temporary Framework

Dear [Name of Aid Recipient]

Confirmation of State aid received under the Covid-19 Temporary Framework for UK Authorities measure and Undertaking in Difficulty Status

Following the outbreak of the Coronavirus, the European Commission has approved schemes to aid businesses affected by the Coronavirus outbreak on the basis of their Temporary Framework, including the Covid-19 Temporary Framework measure for the UK.

The maximum level of aid that a company may receive is €800 000 (€120,000 per undertaking active in the fishery and aquaculture sector or €100,000 per undertaking active in the primary production of agricultural products). This is across all UK measures under the terms of the European Commission's Temporary Framework

The Euro equivalent of the Sterling aid amount is calculated using the Commission exchange rate[20] applicable on the date the aid is offered.

Any aid provided under this measure will be relevant if you wish to apply, or have applied, for any other aid granted based on the European Commission's Temporary Framework. You will need to declare this amount to any other aid awarding body who requests information from you on how much aid you have received. You must retain this letter for four years after the conclusion of the UK's transition from the EU and produce it on any request from the UK public authorities or the European Commission.

Aid may be granted to undertakings that were not in difficulty (within the meaning of Article 2(18) of the General Block Exemption Regulation[21]) on 31 December 2019, but that faced difficulties or entered in difficulty thereafter as a result of the Covid-19 outbreak.[22]

This aid is in addition any aid that you may be have received under the De Minimis regulation allowing aid of up to €200,000 to any one organisation over a three fiscal year period (i.e. your current fiscal year and previous two fiscal years), and any other approved aid you have received under other State aid rules, such as aid granted under the General Block Exemption Regulation.

[20] https://ec.europa.eu/info/funding-tenders/how-eu-funding-works/information-contractors-and-beneficiaries/exchange-rate-inforeuro_en

[21] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014R0651-20170710

[22] If you are an undertaking in difficulty within the meaning of Article 2(18) of the General Block Exemption Regulation you may still be entitled to de minimis aid if you have received less than €200,000 in de minimis aid in the last three years. You should contact us if you consider that you may qualify for de minimis aid on this basis.

Please sign the attached statement confirming your eligibility for support.

[Yours sincerely/ faithfully]

Confirmation of State aid received under the Covid-19 Temporary Framework for UK Authorities and Undertaking in Difficulty status

I confirm that I have received the following aid under measures approved within the European Commission's Temporary Framework between March 2020 and December 2020.

I confirm that my undertaking was not in difficulty (within the meaning of Article 2(18) of the General Block Exemption Regulation) on 31 December 2019.

Body providing the assistance/ aid	Value of assistance (€)	Date of assistance

DECLARATION

Company	
Company Representative Name	
Signature	
Date	

Annex C: Undertakings in Difficulty Assessment [23]

Source: Section 2(18) General Block Exemption Regulations[24]

(18) 'undertaking in difficulty' means an undertaking in respect of which at least one of the following circumstances occurs:

(a) In the case of a limited liability company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital. For the purposes of this provision, 'limited liability company' refers in particular to the types of company mentioned in Annex I of Directive 2013/34/EU (1) and 'share capital' includes, where relevant, any share premium.

(b) In the case of a company where at least some members have unlimited liability for the debt of the company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses. For the purposes of this provision, 'a company where at least some members have unlimited liability for the debt of the company' refers in particular to the types of company mentioned in Annex II of Directive 2013/34/EU.

(c) Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.

(d) Where the undertaking has received rescue aid and has not yet reimbursed the loan or terminated the guarantee or has received restructuring aid and is still subject to a restructuring plan.

(e) In the case of an undertaking that is not an SME, where, for the past two years:
(1) the undertaking's book debt to equity ratio has been greater than 7,5 and
(2) the undertaking's EBITDA interest coverage ratio has been below 1,0.

[23] Accounts used for the undertaking in difficulty assessment should be the last set of statutory approved accounts as at 31 December 2019.

[24] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0651&from=EN