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II

*(Information)*INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES
AND AGENCIES

EUROPEAN COMMISSION

COMMUNICATION FROM THE COMMISSION

Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak

(2020/C 91 I/01)

1. THE COVID-19 OUTBREAK, ITS IMPACT ON THE ECONOMY AND THE NEED FOR TEMPORARY MEASURES**1.1. The COVID-19 outbreak and its impact on the economy**

1. The COVID-19 outbreak is a severe public health emergency for citizens and societies, with infections in all the Union's Member States. It is also a major shock to the global and Union's economies and a coordinated economic response of Member States and EU institutions is crucial to mitigate these negative repercussions on the EU economy.
2. This shock is affecting the economy through different channels. There is a supply shock resulting from the disruption of supply chains, there is a demand shock caused by lower consumer demand and there is the negative effect of uncertainty on investment plans and the impact of liquidity constraints for undertakings.
3. The various containment measures adopted by the Member States, such as social distancing measures, travel restrictions, quarantines and lock downs are intended to ensure that the shock is as short and limited as possible. These measures have an immediate impact on both demand and supply, and hit undertakings and employees, especially in the health, tourism, culture, retail and transport sectors. Beyond the immediate effects on mobility and trade, the COVID-19 outbreak is also increasingly affecting undertakings in all sectors and of all kinds, small and medium enterprises ('SMEs') as well as large undertakings. The impact is also felt on global financial markets, in particular with concerns for liquidity. These effects will not be contained to one particular Member State and they will have a disruptive impact on the economy of the Union as a whole.
4. In the exceptional circumstances created by the COVID-19 outbreak, undertakings of all kinds may face a severe lack of liquidity. Solvent or less solvent undertakings alike may face a sudden shortage or even unavailability of liquidity. SMEs are at particular risk. This can therefore seriously affect the economic situation of many healthy undertakings and their employees in the short and medium term, while having also longer-lasting effects by endangering their survival.
5. Banks and other financial intermediaries have a key role to play in dealing with the effects of the COVID-19 outbreak, by maintaining the flow of credit to the economy. If the flow of credit is severely constrained, economic activity will decelerate sharply, as undertakings struggle to pay their suppliers and employees. Against this background, it is appropriate that Member States can take measures to incentivise credit institutions and other financial intermediaries to continue to play their role in continuing supporting economic activity in the EU.

6. Aid granted by Member States under Article 107(3)(b) TFEU under this Communication to undertakings, which is channelled through banks as financial intermediaries, benefits those undertakings directly. Such aid does not have the objective to preserve or restore the viability, liquidity or solvency of banks. Similarly, aid granted by Member States to banks under Article 107(2)(b) TFEU to compensate for direct damage suffered as a result of the COVID-19 outbreak ⁽¹⁾ does not have the objective to preserve or restore the viability, liquidity or solvency of an institution or entity. As a result, such aid would not be qualified as extraordinary public financial support under the Directive 2014/59/EU of the European Parliament and of the Council (the BRRD) ⁽²⁾ nor under the Regulation 806/2014 of the European Parliament and of the Council (the SRM Regulation) ⁽³⁾, and would also not be assessed under the State aid rules ⁽⁴⁾ applicable to the banking sector. ⁽⁵⁾

7. If due to the COVID-19 outbreak, banks would need direct support in the form of liquidity recapitalisation or impaired asset measure, it will have to be assessed whether the measure meets the conditions of Article 32(4)(d) (i), (ii) or (iii) of the BRRD. Where the latter conditions were to be fulfilled, the bank receiving such direct support would not be deemed to be failing-or-likely-to-fail. To the extent such measures address problems linked to the COVID-19 outbreak, they would be deemed to fall under point 45 of the 2013 Banking Communication ⁽⁶⁾, which sets out an exception to the requirement of burden-sharing by shareholders and subordinated creditors.

8. Undertakings may not only face insufficient liquidity, but they may also suffer significant damage because of the COVID-19 outbreak. The exceptional nature of the COVID-19 outbreak means that such damages could not have been foreseen, are of a significant scale and hence put undertakings in conditions that sharply differ from the market conditions in which they normally operate. Even healthy undertakings, well prepared for the risks inherent to the normal course of business, can struggle in these exceptional circumstances, to such an extent that their viability may be undermined.

9. The COVID-19 outbreak poses the risk of a serious downturn affecting the whole economy of the EU, hitting businesses, jobs and households. Well-targeted public support is needed to ensure that sufficient liquidity remains available in the markets, to counter the damage inflicted on healthy undertakings and to preserve the continuity of economic activity during and after the COVID-19 outbreak. Given the limited size of the EU budget, the main response will come from Member States' national budgets. EU State aid rules enable Member States to take swift and effective action to support citizens and undertakings, in particular SMEs, facing economic difficulties due to the COVID-19 outbreak.

⁽¹⁾ Such aid must be notified by Member States and the Commission will assess it under Article 107(2)(b) TFEU.

⁽²⁾ OJ L 173, 12.6.2014, p. 190.

⁽³⁾ OJ L 225, 30.7.2014, Article 3 (1)(29) of the SRM Regulation.

⁽⁴⁾ Communication on the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition ('Recapitalisation Communication') (OJ C 10, 15.1.2009, p. 2), Communication from the Commission on the treatment of impaired assets in the Community financial sector ('Impaired Assets Communication') (OJ C 72, 26.3.2009, p. 1), Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules ('Restructuring Communication') (OJ C 195, 19.8.2009, p. 9), Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis ('2010 Prolongation Communication') (OJ C 329, 7.12.2010, p. 7), Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis ('2011 Prolongation Communication') (OJ C 356, 6.12.2011, p. 7), Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ('2013 Banking Communication') (OJ C 216, 30.7.2013, p. 1).

⁽⁵⁾ Any measures to support credit institutions or other financial institutions that constitute State aid in the meaning of Article 107(1) TFEU, which fall outside the present Communication or are not covered by Article 107(2)(b) TFEU must be notified to the Commission and shall be assessed under the State aid rules applicable to the banking sector.

⁽⁶⁾ Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis (OJ C 216, 30.7.2013, p. 1).

1.2. The need for close European coordination of national aid measures

10. Targeted and proportionate application of EU State aid control serves to make sure that national support measures are effective in helping the affected undertakings during the COVID-19 outbreak but also that they allow them to bounce back from the current situation, keeping in mind the importance of meeting the green and digital twin transitions in accordance with EU objectives. Likewise, EU State aid control ensures that the EU Internal Market is not fragmented and that the level playing field stays intact. The integrity of the Internal Market will also lead to a faster recovery. It also avoids harmful subsidy races, where Member States with deeper pockets can outspend neighbours to the detriment of cohesion within the Union.

1.3. The need for appropriate State aid measures

11. In the overall effort of Member States to tackle the effects of the COVID-19 outbreak on their economy, this Communication sets out the possibilities Member States have under EU rules to ensure liquidity and access to finance for undertakings, especially SMEs that face a sudden shortage in this period in order to allow them to recover from the current situation.
12. The Commission set out in the Communication on a Coordinated economic response to the COVID-19 outbreak of 13 March 2020 ⁽⁷⁾ the various options available to Member States outside the scope of EU State aid control and which they may put in place without the involvement of the Commission. These include measures applicable to all undertakings regarding wage subsidies, suspension of payments of corporate and value added taxes or social welfare contributions, or financial support directly to consumers for cancelled services or tickets not reimbursed by the concerned operators.
13. Member States can also design support measures in line with the General Block Exemption Regulation ⁽⁸⁾ without the involvement of the Commission.
14. In addition, on the basis of Article 107(3)(c) TFEU and as further specified in the Rescue and Restructuring State aid Guidelines, Member States can notify to the Commission aid schemes to meet acute liquidity needs and support undertakings facing financial difficulties, also due to or aggravated by the COVID-19 outbreak ⁽⁹⁾.
15. Furthermore, on the basis of Article 107(2)(b) TFEU Member States can also compensate 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. Member States can notify such damage compensation measures and the Commission will assess them directly under Article 107(2)(b) TFEU. ⁽¹⁰⁾ The principle of 'one time last time' ⁽¹¹⁾ of the Rescue and Restructuring Guidelines does not cover aid that the

⁽⁷⁾ Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Investment Bank and the Eurogroup on Coordinated economic response to the COVID-19 Outbreak, COM(2020) 112 final of 13. 3.2020.

⁽⁸⁾ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187 of 26.6.2014, p. 1).

⁽⁹⁾ Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p.1). The Commission has authorised various schemes in nine different Member States.

⁽¹⁰⁾ See for example, Commission decision SA. 56685, Denmark - Compensation scheme for cancellation of events related to COVID-19, https://ec.europa.eu/competition/state_aid/cases1/202011/285054_2139535_70_2.pdf.

⁽¹¹⁾ See section 3.6.1 of the Rescue and Restructuring Guidelines.

Commission declares compatible under Article 107(2)(b) TFEU, since the latter type of aid is not '*rescue aid, restructuring aid or temporary restructuring support*' within the meaning of point 71 of the Rescue and Restructuring Guidelines. Therefore, Member States may compensate under Article 107(2)(b) TFEU the damages directly caused by the COVID-19 outbreak to undertakings that have received aid under the Rescue and Restructuring Guidelines.

16. To complement the above mentioned possibilities, the Commission sets out in this Communication additional temporary State aid measures that it considers compatible under Article 107 (3)(b) TFEU, which can be approved very rapidly upon notification by the Member State concerned. Moreover, notification of alternative approaches – both aid schemes and individual measures – remains possible. The aim of this Communication is to lay down a framework that allows Member States to tackle the difficulties undertakings are currently encountering whilst maintaining the integrity of the EU Internal Market and ensuring a level playing field.

2. APPLICABILITY OF ARTICLE 107(3)(B) OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

17. Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid 'to remedy a serious disturbance in the economy of a Member State'. In this context, the Union courts have ruled that the disturbance must affect the whole or an important part of the economy of the Member State concerned, and not merely that of one of its regions or parts of its territory. This, moreover, is in line with the need to make a strict interpretation of any exceptional provision such as Article 107(3)(b) TFEU. ⁽¹²⁾ This interpretation has been consistently applied by the Commission in its decision-making. ⁽¹³⁾
18. Considering that the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings, the Commission considers that State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs.
19. The Commission sets out in this Communication the compatibility conditions it will apply in principle to the aid granted by Member States under Article 107(3)(b) TFEU. Member States must therefore show that the State aid measures notified to the Commission under this Communication are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of the Member State concerned and that all the conditions of this Communication are fully respected.
20. Aid granted under section 3.1 may be cumulated either with aid under section 3.2 or section 3.3, and with aid granted under section 3.5 of this Communication. ⁽¹⁴⁾

3. TEMPORARY STATE AID MEASURES

3.1. Aid in form of direct grants, repayable advances or tax advantages

21. Beyond the existing possibilities based on Article 107(3)(c) TFEU, temporary limited amounts of aid to undertakings that find themselves facing a sudden shortage or even unavailability of liquidity can be an appropriate, necessary and targeted solution during the current circumstances.

⁽¹²⁾ Joined Cases T-132/96 and T-143/96 Freistaat Sachsen, Volkswagen AG and Volkswagen Sachsen GmbH v Commission, ECLI:EU:T:1999:326, paragraph 167.

⁽¹³⁾ Commission Decision 98/490/EC in Case C 47/96 *Crédit Lyonnais* (OJ L 221, 8.8.1998, p. 28), point 10.1; Commission Decision 2005/345/EC in Case C 28/02 *Bankgesellschaft Berlin* (OJ L 116, 4.5.2005, p. 1), points 153 et seq.; and Commission Decision 2008/263/EC in Case C 50/06 *BAWAG* (OJ L 83, 26.3.2008, p. 7), point 166. See Commission Decision in Case NN 70/07 *Northern Rock* (OJ C 43, 16.2.2008, p. 1), Commission Decision in Case NN 25/08 *Rescue aid to Risikoabschirmung WestLB* (OJ C 189, 26.7.2008, p. 3) and Commission Decision of 4 June 2008 in *State aid C 9/08 SachsenLB* (OJ L 104, 24.4.2009, p. 34), and Commission Decision of 16 June 2017 in case .SA.32544 (2011/C) *Restructuring of TRAINOSE S.A* (OJ L 186, 24.7.2018, p. 25).

⁽¹⁴⁾ The temporary aid measures provided for by this Communication can be cumulated with aid falling within the scope of the *de minimis* Regulation (OJ L 352, 24.12.2013).

22. The Commission will consider such State aid compatible with the internal market on the basis of Article 107(3)(b) TFEU, provided that all the following conditions are met (the specific provisions for the primary agricultural and the fishery and aquaculture sectors are set out in point 23):
- a. the aid does not exceed EUR 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;
 - b. the aid is granted on the basis of a scheme with an estimated budget;
 - c. the aid may be granted to undertakings that were not in difficulty (within the meaning of the General Block Exemption Regulation ⁽¹⁵⁾) on 31 December 2019; it may be granted to undertakings that are not in difficulty and/or to undertakings that were not in difficulty on 31 December 2019, but that faced difficulties or entered in difficulty thereafter as a result of the COVID-19 outbreak;
 - d. the aid is granted no later than 31 December 2020; ⁽¹⁶⁾
 - e. the aid granted to undertakings active in the processing and marketing of agricultural products ⁽¹⁷⁾ is conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned.
23. By way of derogation from point 22, for agricultural, fisheries and aquacultural sectors the following specific conditions apply:
- a. the aid does not exceed EUR 120 000 per undertaking active in the fishery and aquaculture sector ⁽¹⁸⁾ or EUR 100 000 per undertaking active in the primary production of agricultural products ⁽¹⁹⁾; all figures used must be gross, that is, before any deduction of tax or other charge;
 - b. aid to undertakings active in the primary production of agricultural products must not be fixed on the basis of the price or quantity of products put on the market;
 - c. aid to undertakings active in the fishery and aquaculture does not concern any of the categories of aid referred to in Article 1, paragraph (1) (a) to (k), of Commission Regulation (EU) No 717/2014 ⁽²⁰⁾;
 - d. where an undertaking is active in several sectors to which different maximum amounts apply in accordance with points 22.a and 23(a), the Member State concerned ensures, by appropriate means such as separation of accounts, that for each of these activities the relevant ceiling is respected and that the highest possible amount is not exceeded in total;
 - e. all other conditions in paragraph 22 apply. ⁽²¹⁾

⁽¹⁵⁾ As defined in Article 2 (18) of the Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187 of 26.6.2014, p. 1).

⁽¹⁶⁾ If the aid is granted in form of tax advantages, this deadline is not applicable and the aid is considered granted when the 2020 tax declaration is due.

⁽¹⁷⁾ As defined in Article 2(6) and Article 2(7) of Commission Regulation (EC) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 193, 1.7.2014, p. 1).

⁽¹⁸⁾ Products listed in Annex I to Regulation No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 (OJ L 354, 28.12.2013, p. 1).

⁽¹⁹⁾ All products listed in Annex I to the TFEU with the exception of the products of the fisheries and aquaculture sector, cf. previous footnote 18.

⁽²⁰⁾ Commission Regulation (EC) No (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 90, 28.6.2014, p. 45).

⁽²¹⁾ The reference to the definition of 'undertaking in difficulty' referred to in point 22 (c) and footnote 15 and 30 shall be read as referring to the definitions contained in Article 2(14) of Regulation (EU) No 702/2014 and Article 3(5) of Regulation 1388/2014 respectively.

3.2. Aid in the form of guarantees on loans

24. In order to ensure access to liquidity to undertakings facing a sudden shortage, public guarantees on loans for a limited period and loan amount can be an appropriate, necessary and targeted solution during the current circumstances.
25. The Commission will consider such State aid in the form of new public guarantees on loans compatible with the internal market on the basis of Article 107(3)(b) TFEU provided:

- a. Guarantee premiums are set at a minimum level as follows:

Type of recipient	Credit risk margin for a 1-year maturity loan	Credit risk margin for a 2-3 years maturity loan	Credit risk margin for a 4-6 years maturity loan
SMEs	25bps	50bps	100bps
Large enterprises	50bps	100bps	200bps

- b. As an alternative, Member States may notify schemes, considering the above table as basis, but whereby maturity, pricing and guarantee coverage can be modulated (e.g. lower guarantee coverage offsetting a longer maturity);
- c. The guarantee is granted by 31 December 2020 at the latest;
- d. For loans with a maturity beyond 31 December 2020, the amount of the loan principal does not exceed:
- i. the double of the annual wage bill of the beneficiary (including social charges as well as the cost of personnel working on the undertakings site but formally in the payroll of subcontractors) for 2019, or for the last year available. In the case of undertakings created on or after 1 January 2019, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation; or
 - ii. 25 % of total turnover of the beneficiary in 2019; or
 - iii. with appropriate justification and based on a self-certification by the beneficiary of its liquidity needs ⁽²²⁾, the amount of the loan may be increased to cover the liquidity needs from the moment of granting for the coming 18 months for SMEs and for the coming 12 months for large enterprises.
- e. For loans with a maturity until 31 December 2020, the amount of the loan principal may be higher than under point 25(d) with appropriate justification and provided that proportionality of the aid remains assured;
- f. The duration of the guarantee is limited to maximum six years and the public guarantee does not exceed:
- i. 90 % of the loan principal where losses are sustained proportionally and under same conditions, by the credit institution and the State; or
 - ii. 35 % of the loan principal, where losses are first attributed to the State and only then to the credit institutions (i.e. a first-loss guarantee); and
 - iii. in both of the above cases, when the size of the loan decreases over time, for instance because the loan starts to be reimbursed, the guaranteed amount has to decrease proportionally;
- g. The guarantee may relate to both investment and working capital loans;
- h. The guarantee may be granted to undertakings that were not in difficulty (within the meaning of the General Block Exemption Regulation ⁽²³⁾) on 31 December 2019; it may be granted to undertakings that are not in difficulty and/or to undertakings that were not in difficulty on 31 December 2019, but that faced difficulties or entered in difficulty thereafter as a result of the COVID-19 outbreak.

⁽²²⁾ The liquidity plan may include both working capital and investment costs.

⁽²³⁾ As defined in Article 2 (18) of the Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187 of 26.6.2014, p. 1).

3.3. Aid in the form of subsidised interest rates for loans

26. In order to ensure access to liquidity to undertakings facing a sudden shortage, subsidised interest rates for a limited period and loan amount can be an appropriate, necessary and targeted solution during the current circumstances. For the same underlying loan principal, aid granted under section 3.2 and section 3.3 cannot be cumulated.

27. The Commission will consider State aid in the form of subsidies to public loans compatible with the internal market on the basis of Article 107(3)(b) TFEU provided the following conditions are met:

a. The loans may be granted at reduced interest rates which are at least equal to the base rate (1 year IBOR or equivalent as published by the Commission ⁽²⁴⁾) applicable on 1 January 2020 plus the credit risk margins as set-out in the table below:

Type of recipient	Credit risk margin for a 1-year maturity loan	Credit risk margin for a 2-3 years maturity loan	Credit risk margin for a 4-6 years maturity loan
SMEs	25bps ⁽²⁵⁾	50bps ⁽²⁶⁾	100bps
Large enterprises	50bps	100bps	200bps

b. As an alternative, Member States may notify schemes, considering the above table as basis, but whereby maturity, pricing and guarantee coverage can be modulated (e.g. lower guarantee coverage offsetting a longer maturity);

c. The loan contracts are signed by 31 December 2020 at the latest and are limited to maximum 6 years;

d. For loans with a maturity beyond 31 December 2020, the amount of the loan does not exceed:

- i. the double of the annual wage bill of the beneficiary (including social charges as well as the cost of personnel working on the company site but formally in the payroll of subcontractors) for 2019 or for the last year available. In the case of undertakings created on or after 1 January 2019, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation; or
- ii. 25 % of the total turnover of the beneficiary in 2019; or
- iii. with appropriate justification and based on self-certification by the beneficiary's of its liquidity needs ⁽²⁷⁾, the amount of the loan may be increased to cover the liquidity needs from the moment of granting for the coming 18 months for SMEs and for the coming 12 months for large enterprises.

e. For loans with a maturity until 31 December 2020, the amount of the loan principal may be higher than under point 27(d) with appropriate justification and provided that proportionality of the aid remains assured.

f. The loan may relate to both investment and working capital needs;

g. The loan may be granted to undertakings that were not in difficulty (within the meaning of the General Block Exemption Regulation ⁽²⁸⁾) on 31 December 2019; it may be granted to undertakings that are not in difficulty and/or to undertakings that were not in difficulty on 31 December 2019, but that faced difficulties or entered in difficulty thereafter as a result of the COVID-19 outbreak.

⁽²⁴⁾ Base rates calculated in accordance with the Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.01.2008, p.6.) and published on the website of DG Competition at https://ec.europa.eu/competition/state_aid/legislation/reference_rates.html.

⁽²⁵⁾ The minimum all in interest rate (base rate plus the credit risk margins) should be at least 10bps per year.

⁽²⁶⁾ The minimum all in interest rate (base rate plus the credit risk margins) should be at least 10bps per year.

⁽²⁷⁾ The liquidity needs may include both working capital and investment costs.

⁽²⁸⁾ As defined in Article 2 (18) of the Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187 of 26.6.2014, p. 1).

3.4. Aid in the form of guarantees and loans channelled through credit institutions or other financial institutions

28. Aid in the form of public guarantees and reduced interest rates pursuant to section 3.2 and section 3.3 of this Communication can be provided to the undertakings facing a sudden liquidity shortage directly or through credit institutions and other financial institutions as financial intermediaries. In the latter case, the conditions set out below must be complied with.
29. While such aid is directly targeting undertakings facing a sudden liquidity shortage and not credit institutions or other financial institutions, it may also constitute an indirect advantage to the latter. Nevertheless, such indirect aid does not have the objective to preserve or restore the viability, liquidity or solvency of the credit institutions. As a result, the Commission considers that such aid should not be qualified as extraordinary public financial support according to Article 2(1) No 28 BRRD and Article 3(1) No 29 SRM-R, and should not be assessed under the State aid rules applicable to the banking sector ⁽²⁹⁾.
30. In any event, it is appropriate to introduce certain safeguards in relation to the possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition.
31. The credit institutions or other financial institutions should, to the largest extent possible, pass on the advantages of the public guarantee or subsidised interest rates on loans to the final beneficiaries. The financial intermediary shall be able to demonstrate that it operates a mechanism that ensures that the advantages are passed on to the largest extent possible to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates. When there is a legal obligation to extend the maturity of existing loans for SMEs no guarantee fee may be charged.

3.5. Short-term export credit insurance

32. The Communication from the Commission on short-term export-credit insurance ⁽³⁰⁾ (the "STEC") stipulates that marketable risks cannot be covered by export-credit insurance with the support of Member States. ⁽³¹⁾ As a consequence of the current outbreak, it cannot be excluded that, in certain countries cover for marketable risks could be temporarily unavailable. ⁽³²⁾
33. In this context, Member States may demonstrate the lack of market by providing sufficient evidence of the unavailability of cover for the risk in the private insurance market. Use of the exemption concerning non-marketable risks envisaged in paragraph 18(d) of the STEC will in any case be considered justified, if:
 - a. a large well-known international private export credits insurer and a national credit insurer produce evidence of the unavailability of such cover; or
 - b. at least four well-established exporters in the Member State produce evidence of refusal of cover from insurers for specific operations.

4. MONITORING AND REPORTING

34. Member States must publish relevant information ⁽³³⁾ on each individual aid granted under this Communication on the comprehensive State aid website within 12 months from the moment of granting.

⁽²⁹⁾ See point 6 of this Temporary Framework.

⁽³⁰⁾ OJ C 392, 19.12.2012, p.1.

⁽³¹⁾ Marketable risks are commercial and political risks on public and non-public debtors established in countries listed in the Annex to the STEC, with a maximum risk period of less than two years.

⁽³²⁾ Section 4.2 of the STEC describes the exceptions to the definition of marketable risks for temporarily non-marketable risk, while section 4.3 sets out conditions for providing cover for temporarily non-marketable risks. Section 5 sets out the procedural requirements, in particular when a notification is required and what level of proof is required.

⁽³³⁾ Referring to information required in Annex III of the Commission Regulation (EU) No 651/2014 of 17 June 2014 and of Annex III of the Commission Regulation (EU) No 702/2014 and Annex III of the Commission Regulation (EU) No 1388/2014 of 16 December 2014.

35. Member States must submit annual reports to the Commission. ⁽³⁴⁾
36. By 31 December 2020, Member States must provide the Commission with a list of measures put in place on the basis of schemes approved based on this Communication.
37. Member States must ensure that detailed records regarding the granting of aid provided for by this Communication are maintained. Such records, which must contain all information necessary to establish that the necessary conditions have been observed, must be maintained for 10 years upon granting of the aid and be provided to the Commission upon request.
38. The Commission may request additional information regarding the aid granted, to verify whether the conditions laid down in the Commission decision approving the aid measure have been met.

5. FINAL PROVISIONS

39. The Commission applies this Communication from 19 March 2020, having regard to the economic impact of COVID-19 outbreak, which required immediate action. This Communication is justified by the current exceptional circumstances and will not be applied after 31 December 2020. The Commission may review it before that date on the basis of important competition policy or economic considerations. Where this would be helpful, the Commission may also provide further clarifications of its approach to particular issues.
40. The Commission applies the provisions of this Communication to all relevant notified measures as of 19 March 2020 even if the measures were notified prior to that date.
41. In accordance with the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid ⁽³⁵⁾ the Commission applies the following in respect of non-notified aid:
 - a. this Communication, if the aid was granted after 1 February 2020;
 - b. the rules applicable when the aid was granted in all other cases.
42. The Commission, in close cooperation with the Member States concerned, ensures swift adoption of decisions upon clear and complete notification of measures covered by this Communication. Member States should inform the Commission of their intentions and notify plans to introduce such measures as early and comprehensively as possible. The Commission will provide guidance and assistance to Member States in this process.

⁽³⁴⁾ OJ L 140, 30.4.2004, p. 1.

⁽³⁵⁾ OJ C 119, 22.5.2002, p. 22.

COMMUNICATION FROM THE COMMISSION**Guidance note to Member States related to Commission Implementing Regulation (EU) 2020/402 making the exportation of certain products subject to the production of an export authorisation, as last amended by Commission Implementing Regulation (EU) 2020/426**

(2020/C 91 I/02)

On 15 March 2020, as part of the response to the consequences of the outbreak of the epidemiological crisis caused by the coronavirus, the Commission published Implementing Regulation (EU) 2020/402 ⁽¹⁾ (the Implementing Regulation) making the exportation of certain personal protective equipment (PPE) subject to the production of an export authorisation.

On 19 March 2020, the Commission adopted an amendment to the Implementing Regulation.

As the Implementing Regulation as amended implies new obligations on the competent authorities of the Member States as well as the economic operators, which are applicable from the day of publication, this Guidance is issued to assist them in the implementation process.

This Guidance is not legally binding and is for informative purposes only. It does not replace the Implementing Regulation as amended. It is without prejudice to the interpretation of the Regulation by the Court of Justice.

1. Procedure

The Commission adopted the implementing Regulation and its amendment under an urgency procedure, pursuant to Article 5 of Regulation (EU) 2015/479 of the European Parliament and of the Council on common rules for exports ⁽²⁾.

The Regulation is valid for a six-week period, during which Member States will be consulted in the Safeguard Committee to (i) confirm the approach and (ii) decide on the need to take appropriate measures for a subsequent period.

2. Objective of the measures

These measures have been adopted in the light of the increased need for PPE and the expectation that demand for these products will continue to increase significantly in the future, alongside developing shortages in several EU Member States.

Despite the fact that increased production has been encouraged, the current level of Union production and existing stocks will not be sufficient to meet the demand within the Union. This is particularly the case as PPE can be exported without restriction to other parts of the world, while some third countries have decided, officially or informally, to restrict exports of PPE. Some of these countries are also traditional suppliers to the Union market and this is further exerting pressure on the Union market.

PPE are an essential product to prevent the further spreading of the disease, and safeguard the health of medical staff treating infected patients.

Hence, the objective of these exceptional measures is to remedy and prevent a critical situation.

At the same time, it is not the intention of the Union to restrict exports any more than absolutely necessary, and the Union also wishes to uphold the principle of international solidarity in this situation of a global pandemic. This is why Member States can and should grant export authorisations *inter alia* in the cases listed in Article 2(3) of the Implementing Regulation, but also where the shipment in question poses no threat to the actual need for PPE within the Union and serves to satisfy a legitimate need for official or professional medical use in a third country.

For any questions concerning the supply of PPE within the EU, the Member States may refer to the existing Emergency Response Coordination Centre (ERCC) ⁽³⁾.

⁽¹⁾ OJ L 77 I, 15.3.2020, p. 1.

⁽²⁾ OJ L 83, 27.3.2015, p. 34.

⁽³⁾ ECHO-ERCC@ec.europa.eu

3. **Relation to Member States measures** ⁽⁴⁾

The shortages in the supply of PPE in recent days have lead some Member States to take certain measures at national level. At the same time, preserving the integrity of the single market is one of the objectives pursued by the Commission during the current crisis to enhance jointly the response to the challenge of health protection in the context of limited PPE supplies.

The Implementing Regulation was adopted with the understanding that Member States should revoke any restrictive national actions taken, formally or informally, concerning either exports to third countries or trade between the Member States within the Single Market, going beyond actions designed to ensure priority access to such material by those who need it most (e.g. hospitals, patients, healthcare workers, civil protection authorities) ⁽⁵⁾.

4. **Practical guidance**

4.1. *Products concerned*

The export authorisation requirement concerns products listed in the 'Description' in Annex I to the Implementing Regulation.

This Annex details personal protective equipment for which there are vital needs within the Union with regard to hospitals, patients, field workers, civil protection authorities.

The Commission can review the list in the light of the developments both in terms of new evidence on scarcity of supplies or increased manufacturing capacities allowing to alleviate shortage concerns. In that case, it will amend the Implementing Regulation or adopt a new Regulation.

The information about the latest state of play of the Commission's response to coronavirus is provided on a dedicated web site: https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response_en#latest. The competent authorities in the Member States and economic operators are therefore invited to consult it on a daily basis.

The Implementing Regulation applies irrespective of whether the product concerned is originating in the Union or not.

4.2. *Activity concerned*

The Implementing Regulation applies to all exports outside the Union.

This includes all non-EU countries, including preferential partners.

However, in view of the deep integration of the internal market with all four member States of the European Free Trade Association (EFTA), as well as the integration of the production value chains and distribution networks with the same countries, the Implementing Regulation does not apply to exports to those four countries, which thus remain unrestricted. Given the particular dependency of the the overseas countries and territories listed in Annex II of the Treaty, as well as the Faeroe Islands on the metropolitan supply chains of the Member States, and of Andorra, San Marino and the Vatican City on the supply chains of neighbouring Member States the same applies to them.

The Implementing Regulation does not apply to trade between the EU Member States. Pursuant to Article 127(3) of the Withdrawal Agreement, the United Kingdom of Great Britain and Northern Ireland is to be considered as a Member State, and not as a third country.

The Implementing Regulation does not apply to imports of PPE identified in Annex I to the Implementing Regulation into the Union. In the context of facilitating imports and avoiding delays, the Commission has put forward a Recommendation 2020/403 on the conformity assessment and market surveillance procedures within the context of the COVID-19 ⁽⁶⁾.

⁽⁴⁾ On 16 March 2020, the Commission issued guidelines for Member States which set out a number of key principles for an integrated approach to an effective border management to protect health, while preserving the integrity of the Single Market, are set out in Commission guidelines, Guidelines for border management measures to protect health and ensure the availability of goods and essential services, C (2020) 1753.

⁽⁵⁾ See also Guidance on national measures provided in Annex 2 to the Communication of 13 March 2020 on a Coordinated economic response to the COVID-19 outbreak, COM(2020) 112 final.

⁽⁶⁾ OJ L 79 I, 16.3.2020, p. 1.

4.3. *Application obligation*

The exporter must file an application for an export authorisation.

Member States define the content of the application form. The information required in the form should enable the Member State to establish an export authorisation in accordance with Annex II of the Implementing Regulation. With the aim to increase a co-ordinated approach, a possible template of an application form is provided as an example in the Annex I to this Guidance.

To the extent possible, the Member States should enable the submission of an application via electronic means.

5. **Competent authorities in the Member States**

The application is made to the competent authority in the Member State where the exporter is established.

If protective equipment is located in one or more Member States other than the one where the application for export authorisation has been made, that fact is to be indicated in the application. In case of multiple locations, all locations should be indicated.

The Member States are invited to notify to the European Commission's Directorate-General for Trade, at the latest by 20 March 2020 at midnight, the names and contact details of competent authorities tasked with the issuance of the export authorisations. This information will be published on the website of the Directorate-General for Trade ⁽⁷⁾. The notification must be done electronically using the functional mailbox indicated in paragraph 6.

5.1. *Assessment of the application by the competent authorities*

The system is not an export ban. However, all exports within the scope of application of the Regulation are subject to the production of an export authorisation.

In deciding whether to grant an export authorisation, the Member States must fulfil the objective of the implementing act, i.e. ensure the adequacy of supply in the Union in order to meet the vital demand for PPE.

In other words, export authorisations could be granted only where the shipment in question does not pose a threat to the availability of PPE on the market of the Member State in question or elsewhere in the Union for the purpose of meeting the objective of the Regulation.

Within this overarching objective, the competent authorities enjoy a margin of discretion and exports of certain quantities of specific PPE products may be authorised under specific circumstances depending on the needs of Member States.

Article 2(3) of the Implementing Regulation includes an illustrative list of considerations which are to be taken into account, where appropriate, in deciding whether an export authorisation could be issued.

These considerations concern, amongst others, the fulfilment of a supply obligation under joint procurement by the Union and the Member States, the support of the activities of the World Health Organisation (WHO), the support of EU-level coordinated responses to crisis situations or the request for assistance by third countries or international organisations, including the need for emergency supplies required by humanitarian non-governmental organisations or international organizations for their own operations to deliver humanitarian assistance in third countries.

The objective of the latter is to ensure, to the extent possible, the availability of PPE where needed outside the Union in third countries which may face an acute need for PPE at a particular moment. These are expressions of the principle of international solidarity both in general and in a situation of a global pandemic with impacts across the world and of the fact that international trade can contribute to the availability of products where needed and when needed.

The list in Article 2(3) is not exhaustive and Member States may take other elements into account. However, they must comply with the general objective of the Implementing Regulation as recalled above.

⁽⁷⁾ <https://ec.europa.eu/trade/>

In particular, the Member States should take into account the degree of market integration for the products concerned achieved under an agreement or arrangement establishing a free trade area with the intended country of export. It would be counterproductive to disrupt closely integrated value chains and distribution networks already established on the basis of those agreements or arrangements, in particular in the case of neighbouring countries and economies. The Commission therefore strongly urges Member States to grant authorisations to the extent necessary to prevent any such disruption.

Among other elements which the competent authorities could consider is whether the shipment in question serves to fulfil contractual obligations entered into before a reference period. To enhance a coordinated approach across the EU, Member States could use as reference the preceding calendar year (i.e. 2019). The Member States have the responsibility to ensure that these additional elements have to be subject to an overriding consideration of EU needs if those cannot otherwise be met.

5.2. *Relevant deadlines*

The Member States must process the export authorisation requests within 5 working days from the date on which all required information has been provided to the competent authorities.

The deadline can be extended for a further 5 working days in duly justified circumstances.

If the product is located in one or more Member States other than the one where the application for export authorisation has been made, the Member State to which the application has been made should immediately consult the competent authorities of the Member State or Member States in question and provide the relevant information.

The consulted authorities have to make known in writing within 10 working days any objections they may have to the granting of such authorisation. These objections bind the Member State in which the application is made.

At the same time, given the urgent needs arising from the outbreak of coronavirus, Member States are invited to process the applications as soon as possible and ahead of the indicated deadlines of 5 or 10 working days respectively.

5.3. *Export authorisation*

Without a production of an export authorisation, the exportation is prohibited.

To increase a co-ordinated approach across the EU, the template for the export authorisation is provided in Annex II of the Implementing Regulation.

6. **Notification**

The objective of these exceptional measures is to ensure an adequate level of supply in all Member States, depending on their needs for PPE.

In order to ensure a transparent process, Member States are requested to notify to the Commission electronically the authorisations granted and not granted, on the basis of the template in Annex II. This notification should be made without delay as soon as the decision on the authorisation is taken.

This information should be transmitted electronically, to the functional mailbox below:

TRADE-EXPORTAUTHORISATIONPPE@ec.europa.eu

The functional mailbox should also be used for any questions on the application of this system.

This Guidance is a dynamic document and could be updated as the new issues and questions are flagged to the Commission.

ANNEX I

Template for application of export authorisation

EUROPEAN UNION		Export of personal protective equipment (Regulation (EU) 2020/402)	
1. Exporter (EORI number if applicable)			
5. Destination country		6. Final recipient	
7. Commodity code	8. Quantity	9. Unit	10. Description of the goods
11. Location	12. Date of planned export		
13. Signature, place and date, stamp			

Explanatory notes to the export authorisation form:

Box 1 Exporter: Full name and address of the exporter for whom the authorisation is issued + EORI number if applicable.

Box 4 Issuing authority: Full name and address of the Member State authority that issued the export authorisation.

Box 5 Destination country: 2-letter geonomenclature code of the country of destination of the goods for which the authorisation is issued.

Box 6 Final recipient: Full name and address of the final recipient of the goods, if known at the time of issuance + EORI number if applicable. If the final recipient is not known at the time of issuance, the field is left empty.

Box 7 Commodity code: The numerical code from the Harmonised System or the Combined Nomenclature (2) under which the goods to export are classified when the authorisation is issued.

Box 8 Quantity: The quantity of goods measured in the unit declared in box 9.

Box 9 Unit: The measurement unit in which the quantity declared in box 8 is expressed. The units to use are 'P/ST' for goods counted by number of pieces (e.g. masks), and 'PA' for goods counted by pairs (e.g. gloves).

Box 10 Description of the goods: Plain language description precise enough to allow identification the goods.

Box 11 Location: The geonomenclature code of the Member State where the goods are located. If the goods are located in the Member State of the issuing authority, this box must be left empty.

Box 12: Date at which the goods for which the authorisation is sought are to be exported

Box 13 Signature, stamp, place and date: The signature and stamp of the issuing authority. The place and the date of issuance of the authorisation.

ANNEX II

Template for Member States notifications

EUROPEAN UNION		Export of personal protective equipment (Regulation (EU) 2020/402)	
0. Name and contact details of the competent Authority			
1. Exporter (EORI number if applicable)			
2. Destination country		3. Final recipient	
4. Commodity code	5. Quantity	6. Unit	7. Description of the goods
8. Location			
Authorisation to export granted? (Yes/No)			
Reasons for acceptance/refusal:			
Any pertinent information concerning the consultation of other Member States pursuant to Article 2(2) of the implementing Regulation:			
<p>Box 0: Full name and address of the Member State authority that issued the export authorisation.</p> <p>Box 1 Exporter: Full name and address of the exporter for whom the authorisation is issued + EORI number if applicable.</p> <p>Box 2 Destination country: 2-letter geonomenclature code of the country of destination of the goods for which the authorisation is issued.</p> <p>Box 3 Final recipient: Full name and address of the final recipient of the goods, if known at the time of issuance + EORI number if applicable. If the final recipient is not known at the time of issuance, the field is left empty.</p> <p>Box 4 Commodity code: The numerical code from the Harmonised System or the Combined Nomenclature under which the goods to export are classified when the authorisation is issued.</p> <p>Box 5 Quantity: The quantity of goods measured in the unit declared in box 6.</p> <p>Box 6 Unit: The measurement unit in which the quantity declared in box 5 is expressed. The units to use are 'P/ST' for goods counted by number of pieces (e.g. masks), and 'PA' for goods counted by pairs (e.g. gloves).</p> <p>Box 7 Description of the goods: Plain language description precise enough to allow identification the goods.</p> <p>Box 8 Location: The geonomenclature code of the Member State where the goods are located. If the goods are located in the Member State of the issuing authority, this box must be left empty.</p>			

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