



European State aid during COVID-19

A global COVID-19 response for legal leaders

Due to COVID-19, many companies are facing unprecedented liquidity challenges, and are continuously looking for solutions to that problem. All governments (national and regional) are announcing or have taken important support packages to help companies weather these financial consequences. In the European Union, and in the European Economic Area, many State aid measures are subject to European Commission or EFTA Surveillance Authority review and approval.

If a company receives non-approved State aid, the received amount, increased with a recovery interest rate, must be refunded. How can unpleasant surprises be avoided?



How to avoid illegal State aid

The European Commission is working in close cooperation with Member States to make sure that the necessary company support measures can be put in place. However, the Commission stresses that State aid rules must be respected to ensure a level playing field in the European Union.

No illegal State aid will be tolerated.

Typical questions to consider:

- Can payment deferrals for taxes, social contributions, etc. be accepted?
- Can government guarantees for loans be accepted or applied for?
- Can interest subsidies for loans be accepted?
- Can direct government grants or subsidies be accepted?
- Are there any strings attached to the gifts received from the government?



Typical approach:

- When considering using a government scheme; accepting direct grants, tax breaks, loans, subsidies, grants, etc.; or asking for them...
- Check compliance with State aid law. This check can often be performed quickly, and a degree of certainty.
- In case of doubt, engage in discussions with the government entities awarding the aid, and agree on a notification to the European Commission, if needed.



Typical government measures in the wake of COVID-19 – State aid check

The European Commission has issued a Communication on 13 March 2020, and adopted a Temporary Framework on 19 March 2020, which already gives good guidance.

Are tax or social contribution payment deferrals illegal State aid?

- Measures that are applied to all companies are not State aid
- **Payment deferrals open for all companies are not State aid**
- Confirmed in the Commission Communication of 13 March 2020
- **Companies should be careful with deferrals for just one or a limited number of sectors or companies—a State aid compliance scan should be made.**

Are government guarantees or loans illegal State aid?

- **A quick State aid compliance scan can be performed;** if it is part of a scheme that was approved by the European Commission, then this is perfectly legal State aid.
- **An in-depth State aid compliance scan can be performed;** if it deviates from an approved scheme or has not been approved by the European Commission. The measures should be submitted to the European Commission for approval.

Can I receive direct government funding to cover my liquidity needs?

- **For any direct funding, carry out a State aid compliance scan**
- If the direct funding is part of a scheme approved by the European Commission, then this is perfectly legal State aid.
- If the direct funding is made only to your company or a limited number of companies or sectors, **carry out an in-depth State aid compliance scan**, and be prepared to go through a notification with the European Commission.

Even in times of crisis, a company needs to check whether the government support that is given is not illegal State aid. This will often involve a brief compliance check, but at least you will have some certainty that your company can keep the support.

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