

Notification template for State aid measures notified under Article 107(2)(b) TFEU in the context of the COVID-19 outbreak

Description of the exceptional occurrence and the official reaction of your authorities

In its Communication of 13 March 2020,¹ the Commission clarified that the COVID-19 outbreak qualifies as an ‘exceptional occurrence’ for the purposes of Article 107(2)(b) TFEU. Member States can compensate undertakings directly affected by the COVID-19 outbreak due to the restrictive measures adopted by the competent authorities in relation to that outbreak.

The questions below aim at clarifying the country-specific situation.

- Data on the COVID-19 outbreak in your country: date of first case reported in the country; number of affected persons at the time of notification.
- Data on the economic impact of the COVID-19 outbreak in your country, notably in the sectors covered by the aid measure, if available.²
- Sequence of (main) events between the occurrence and the adoption of the aid measure, including any restrictive measures adopted by the competent authorities that directly affected the beneficiaries under the measure. Please provide dates of adoption, entry into force, expiry and prolongation (if applicable) of the relevant restrictions.

General description of the aid measure

- National legal basis: please provide a copy; specify if it is a draft or if it has already been adopted; and provide publication data and an indication whether it contains a suspensory clause in compliance with Article 108(3) TFEU.
- Objective
- Budget
- Geographical scope
- Form of aid and financing mechanism
- Website(s) on which the relevant information on the measure will be published, in line with the requirements of the Commission’s Communication on transparency³
- Beneficiaries: estimated number / sectors concerned / size of companies concerned / exclusions from scope. In case of individual aid: shareholders of the beneficiary
- Granting authority and competent authority to manage the measure, if different
- Duration:
 - Date of entry into force of the measure

¹ Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Investment Bank and the Eurogroup, Coordinated economic response to the Covid-19 outbreak, 13 March 2020, COM(2020) 112 Final, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0112>.

² For transport cases, this includes data on the impact on traffic of the sector covered: in case of individual aid, that would be passenger numbers and comparison with the reference period; in case of aid schemes, that could be the overall impact on the traffic across the sector.

³ OJ C 198, 27.6.2014, p. 30.

- Confirmation of compliance with Article 108(3) TFEU⁴
- Time period of application of the measure
- Time period in which beneficiaries can submit an application for aid
- Aid intensity (under Article 107(2)(b) TFEU, it may reach 100 % of eligible costs)⁵ and aid ceiling per beneficiary (if applicable)

Description of the direct causal link

- Please describe the causal link: (i) between the COVID-19 outbreak and the restrictive measures affecting the beneficiaries, and the damage suffered, and (ii) between the damage suffered and the aid.
- Please explain the type, form, duration and impact/effects of the restrictive measures on the beneficiaries and whether those measures preclude the beneficiaries, *de jure* or *de facto*, from operating their economic activity or a specific and severable part of that activity in line with point 15bis of the Temporary Framework.⁶
- Please justify the duration of the notified compensation period (including its start and end dates) by reference to eligible restrictive measures. If part of that period is not covered by all eligible restrictive measures, please explain why that part should be included in the compensation period (e.g., by reference to a significant impact of other residual restrictions on the beneficiary compared to the reference period).⁷

Description of the damage covered⁸ and the safeguards applied to the aid measure

- Detailed description of the type of damage compensated⁹: e.g., loss of profits (loss of income minus any avoided costs, preferably identified based on standard accounting measures) directly linked to restrictive measures imposed by Member States in the context of the COVID-19 outbreak.
- Methodology used for assessing the damage per beneficiary, including:
 - Documents to be submitted by beneficiaries to the granting authority,
 - Certification of the documents by independent experts,
 - Verification by competent authorities,
 - Precise description of the damage/eligible costs of each applicant,

⁴ No aid granted before notification of the Commission's approval.

⁵ Expressed in % of eligible costs.

⁶ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1) and C(2021) 564 (OJ C 34, 1.2.2021, p. 6).

⁷ This may not apply in certain cases (e.g., multi-sector schemes where certain *de jure* prohibitions are still in place for some sectors).

⁸ For the transport sector in particular, see Annex I.

⁹ E.g., not just “*economic losses suffered from the COVID-19 outbreak*”, but rather “*economic losses suffered from restrictions imposed by Member States in the context of the COVID-19 outbreak, encompassing: (i) compensation for tickets sold in pre-sales; (ii) compensation for tickets which could not be sold on the day of the event based on average historic data of occupation rate as a representative proxy; (iii) payment of artist fees under contractual obligations; (iv) payment of non-recoverable monies owed to contractors based on contractual obligations or third party liability*”.

- In case of using a reference period¹⁰, please identify that period and explain why it is relevant and representative.
- If applicable, how is it ensured that an advantage is not obtained from the fact that the effect of a restrictive measure relates to a targeted activity or a specific and severable part of activity, and the activity is shifted or the capacity is used for other related or linked activities, which have become more profitable as a result of that shift?¹¹
- If applicable, in view of the prolonged crisis, please explain how the methodology addresses the economic effects of declines in demand or in attendance due to lower aggregate demand; or due to greater customer reluctance to gather in public places, transport means or other venues; or due to generally applicable restrictions on capacity, social distancing measures, *etc.* In particular, please explain how to ensure that the beneficiary is compensated only up to the level of profits that it could have credibly generated in the absence of the restrictive measures, for the part of its activity which is curtailed, in line with point 15ter of the Temporary Framework.
- If aid has already been granted to the same beneficiaries in the context of the COVID-19 outbreak (e.g., under Article 107(3)(b) TFEU), please explain why the aid measures taken together are proportionate and do not lead to overcompensation.
- Precise description of the aid mechanism, in particular:
 - How does that mechanism ensure in practice that the aid amount does not exceed the damage suffered?
 - How does that mechanism ensure that the aid measure does not compensate for difficulties encountered by each individual beneficiary that are unrelated to the COVID-19 outbreak (e.g., difficulties that the beneficiary already experienced before the outbreak)?

Agricultural and fishery/aquaculture sectors

- If the measures notified on the basis of Article 107(2)(b) TFEU to make good the damage caused by exceptional occurrences cover the agricultural and/or fishery and aquaculture sector(s), or cover the whole economy including those sectors, Member States must, when notifying such measures, provide the necessary information to allow the Commission to assess the measures under the applicable sections of the State aid Guidelines for the agricultural sector¹² and/or the State aid Guidelines for the fishery and aquaculture sector¹³.
- With regard to the agricultural sector, the provisions of Part II, Chapter 1, Section 1.2.1.1: “*Aid to make good the damage caused by natural disasters or exceptional occurrences*” of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 apply. Member States must also submit the “*Supplementary information sheet 1.2.1.1.*” with regard

¹⁰ E.g., to assess net loss at two periods in time.

¹¹ For example, the damage compensation may be capped to the prohibited activity and the activity seen in its entirety may not be more profitable than the entire operating profit of those activities in the reference period (e.g., through account separation between the affected and the non-affected activities or, where that is not possible, the revenue shares of the activities from the reference period are used to allocate fixed costs).

¹² European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020, OJ C 204, 1.7.2014, p. 1. Amended by the Notices published in OJ C 390, 24.11.2015, p. 4; OJ C 139, 20.4.2018, p. 3; and OJ C 403, 9.11.2018, p. 10.

¹³ Guidelines for the examination of State aid to the fishery and aquaculture sector, OJ C 217, 02.07.2015, p. 1.

to the aid under this section.

- With regard to the fishery and aquaculture sector, the provisions of Chapter 4, Section 4.1: “*Aid to make good the damage caused by natural disasters or exceptional occurrences*” of the Commission Guidelines for the examination of State aid in the fishery and aquaculture sector 2014 to 2020 apply. Member States must also submit the “*Supplementary information sheet*”¹⁴, with regard to the aid under this section.

Commitments

- Confirm that any payment exceeding the damage suffered as a direct consequence of the restrictions imposed by Member States in the context of the COVID-19 outbreak will be recovered.
- Confirm that the payment made to beneficiaries shall be net of any amount recovered by insurance, litigation, arbitration or other source for the same damage. If the aid is paid out before the insurance, the authorities will recover the insurance amount from the beneficiary.
- Confirm that the benefit of the aid is excluded for any beneficiary who:
 - is responsible for the damage suffered; and/or
 - did not conduct its activities with due diligence or in compliance with applicable legislation or did not take any measure to mitigate its damage. Please list any measures taken by the beneficiary in order to mitigate its damage.
- Confirm that aid under the measure cannot be cumulated with other aid for the same eligible costs.
- If the measure is co-financed by the European Regional Development Fund (ERDF), European Social Fund (ESF), Cohesion Fund (CF), European Agricultural Fund for Rural Development (EAFRD), European Maritime and Fisheries Fund (EMFF) or the European Union Solidarity Fund (EUSF), please confirm that the rules applicable under these Funds will be respected.
- Commit to provide a report by an independent financial auditor no later than one year after the date of the Commission decision:
 - specifying the amount of compensation and recoverable advances granted; and
 - including a summary of all recoveries ordered under the measure.
- Confirm that the notification does not contain confidential information. Otherwise, indicate the information from the notification that contains confidential information.

¹⁴ Annex I.14 to Regulation (EC) No 794/2004 as amended in accordance with Commission Regulation (EU) 2016/2105 of 1 December 2016.

Annex I – Transport sector

With regard to the transport sector (airlines, airports, ground handling, rail, bus and maritime companies, *etc.*), the assessment of damage compensation will be made on a case-by-case basis and, depending on the type of applicable restrictions, based on a granular ‘route-by-route’ or ‘destination-by-destination’ analysis. As regards the damage/eligible costs and the reference period used, the Commission will need the following information and justifications when assessing notifications by Member States:

- Identification of the additional costs, of the foregone revenues (e.g., loss of traffic), and of costs not incurred (e.g., variable costs, catering). Those items should be directly linked to the restrictive measures imposed by Member States in the context of the COVID-19 outbreak, such as flight bans, border closures, entry bans, nationwide or regional lockdowns, non-essential travel bans and other travel restrictions on one and/or both sides of a route (domestic or international);¹⁵
- Definition of a relevant and representative reference period, when the situation was comparable to the situation that should have prevailed during the period of the COVID-19 outbreak that constitutes the eligible compensation period taking into account seasonality (e.g., summer and winter season, holidays);
- If applicable, comparison of routes operated / destinations served by the beneficiary that are affected by restrictions with those not affected by restrictions to identify the volume of passengers that travelled in the absence of those restrictions (in relation to which the losses incurred by the beneficiary are eligible for compensation) in contrast to passengers who did not travel regardless of the existence of restrictions (in relation to which the losses incurred by the beneficiary are not eligible for compensation);
- Reconstitution of damage caused by comparison of the situation during the exact compensation period (beginning on the day the eligible travel restrictions started to take effect) and the reference period based on a rigorous quantification of the damage in line with point 15ter of the Temporary Framework. The reconstitution should factor in the change of important parameters (e.g., fall in price of fuels).

¹⁵ The damage should in principle be calculated by comparing the operating result (preferably EBITDA) of the beneficiaries during the compensation period with the operating result (preferably EBITDA) that the beneficiaries would have expected absent the COVID-19 outbreak and the applicable restrictions.

Annex II – Language waiver

In order to speed up the processing of the notification, it is recommended to provide the below language waiver with the notification, on letter head of the relevant authorities, dated and signed

Due to the urgent need to adopt and notify a Decision in relation to the present notification relating to [brief description of the measure subject to the notification], the [national: specify] government agrees exceptionally to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of the EC Regulation 1/1958 and to have the planned Decision adopted and notified pursuant to Article 297 TFEU in English language.