LEGAL UPDATES: COVID-19

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EU Commission's action against Covid-19 pandemic.

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I. Introduction

This article outlines the European Commission's response to the Covid-19 epidemic, with particular reference to measures aimed at counterbalancing the socio-economic collateral effects of the crisis.

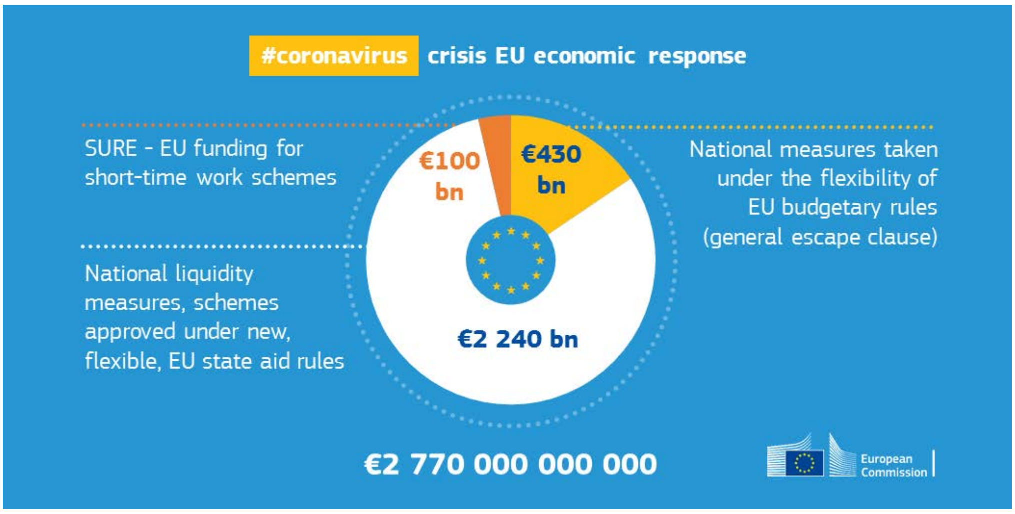
The first set of interventions is delineated in the *Communication entitled Coordinated Economic Response to the COVID-19 Outbreak, COM(2020) 112*[1], published on March 13, 2020.

The Communication recognized that, given the limits of the EU budget, the primary response to the Covid-19 in terms of public finances would have to come from Member States' national funds.

Nonetheless, it is deemed that an effective health emergency management can only be achieved through a solution coordinated at a European level.

The second set of interventions has been presented on April 2, 2020, and it prescribes operational rules regarding the 2020 budget, aimed at the one hand at channeling all the available structural funds to cope the coronavirus and on the other, at introducing a new instrument for temporary Support to mitigate Unemployment Risks in an Emergency (SURE).

As a result of the interventions detailed in the following paragraphs, the total amount of resources made available by the European institutions to respond to the crisis amounts to 2.770 billion Euro.



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[1] See the full text of the Communication at https://ec.europa.eu/info/sites/info/files/communication-coordinated-economic-response-covid19-march-2020_en.pdf

II. Mobilizing the EU budget

On April 2, 2020, the European Commission presented a comprehensive package of proposals having as underlying *rationale* the purpose to:

i. create a new European solidarity instrument, worth 100 billion Euro, in order to help workers maintain their jobs and companies to keep their employees (the SURE initiative, *detailed at paragraph IV]*;

ii. make the EU's structural and investment funds fully flexible[2], so that up to the last available euro can be directed to support efforts to combat the pandemic and cushion its economic backlash. Thus, it is proposed to channel all the uncommitted funds from the three cohesion policy funds (European Regional Development Fund, European Social Fund, and Cohesion Fund) into the battle against Covid-19, thus making it possible:

   a. the transfer of resources between funds, between categories of regions and between strategic objectives to ensure their use where there's the most need;

   b. EU funding of 100% - exceptionally abolishing the requirement for national co-financing - in view of the fact that Member States are already using all their resources;

   c. simplification of procedural steps related to the implementation of programs, financial instruments, and auditing. The Commission also announces extreme flexibility not only if beneficiaries fail to meet their obligations on time for reasons related to the pandemic but also in assessing compliance with Member States' obligations;

   d. Retroactive reimbursement of completed or fully realized expenses prior to the application for funding;

iii. include every available resource of the EU budget for 2020 – worth 3 billion Euro - in an emergency tool that provides Support to European health systems for the provision of protective devices and breathing equipment, but also for the medical research, the use of new treatments, and the production, purchase, and distribution of vaccines.

These are additional measures to those already announced in the aforementioned Communication *Coordinated Economic Response to the COVID-19 Emergency, COM(2020) 112*[3], which were aimed at:

i. Providing liquidity to small and medium-sized enterprises through the provision from the European Investment Fund (EIF) of 1 billion Euro as a guarantee. The existing instruments of the EIF programs in support of investment will be reinforced with EUR 750 million under the European Strategic Investment Fund (EIF), which should provide an additional EUR 250 million to the EIF to support SMEs. Moreover, it is planned to suspend credits for the affected companies, which will allow postponing the repayments, thus alleviating the pressure on the finances of the SMEs involved;

ii. Maintaining the flow of liquidity to the economy through the banking sector.

[2] See full text of the proposal at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0138&from=IT

[3] See above, note 1.

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III. State aid

In response to the economic and health crisis related to the spread of Covid-19, the EU Commission decided to give State Members full flexibility in the application of State aid rules. To this end, in the Declaration of last March 27, the Commission announced that it had launched a consultation with the State Members on amendments to be made to the Temporary Framework for State Aid Measures to support the economy in the emergency, in order to broaden the range of measures contained in it.

With the Temporary Framework, the EU Commission legitimized, until the end of December 2020, 5 types of state aid in order to allow Member States to intervene in support of the economic emergency caused by the ongoing pandemic. The five types of legitimate state aid Temporary framework are:

i. direct grants, tax breaks and upfront payments of up to 800,000 euros per company;
ii. State guarantees;
iii. subsidized public loans to businesses;
iv. guarantees for banks;
v. short-term export credit insurance.

As of March 27, the European Commission already authorized, under the Temporary Framework, 22 state aid projects, notified by several Member States[4]. From March 27 to April 1, the number of authorized projects rose further[5].

Moreover, on March 27, the EU Commission, in order to further expand the flexibility introduced by the Temporary Framework, amended the Short-Term Export Credit Communication, temporarily excluding all countries from the list of countries with *"market-insurable risks."* This change is aimed at ensuring greater opportunities for state insurance to cover the risks of export credit at a time when private insurance is unable to do so due to the crisis generated by the Covid-19 pandemic.

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III. Use the flexibility allowed by the Stability and Growth Pact

The European Commission has proposed to fully implement the flexibility permitted by the Stability and Growth Pact (SGP)[6], and in particular:

i. The general safeguard clause is activated, under which, in the event of a severe economic recession for the Euro area or the EU, Member States can take appropriate budgetary measures to deal with the consequences of the crisis, within the framework of the procedures provided by the SGP.

[4] https://ec.europa.eu/commission/presscorner/detail/en/statement_20_551

[5] See all the authorized projects at https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/economy/state-aid-cases_en.

[6] See the full text of the Stability and Growth Pact at https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:l25021&from=EN

The European Commission formalized the proposal to activate the safeguard clause on March 20, 2020, in the Communication referred to in *COM(2020), 12320*[7]. The Commission states its belief that, for the first time since its introduction in 2011, there are conditions for activating the SGP safeguard clause;

ii. the application of flexibility to deal with *"unusual events not subject to the control"* of the Member State's public administration, which the Commission considers appropriate to the current situation. The SGP expects that, in the presence of such events that have a significant impact on the public finances of a Member State, the latter may temporarily deviate from the budget targets envisaged. The Commission considers this clause to also apply to exceptional expenditures intended to contain the Covid-19 emergency, especially concerning health expenditure and targeted support measures for businesses and workers, provided they are temporary in nature and linked to the epidemic;

iii. The exclusion, to assess compliance with budgetary rules, and in particular the approach to the medium-term objective, of the effects of budgetary measures *una tantum*. This category would include the necessary measures to contain and treat the pandemic, provide liquidity support to businesses, and protect the jobs and incomes of affected workers, provided they are temporary and linked to the epidemic.

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IV. INCOME AND EMPLOYMENT SUPPORT MEASURES

On April 2, 2020, the European Commission's adopted the SURE initiative, which is aimed at protecting workers and jobs put at risk by the COVID-19 epidemic by creating a temporary and complementary tool that would put additional resources available to Member States facing sudden increases in public expenditure to offset the economic and social recessive effects of policies to combat the spread of coronavirus.

Financial assistance would consist of granting loans to the applicant countries, guaranteed by all Member States.

To this end, the European Commission would be allowed to borrow, on behalf of the EU, through the issuance of securities on the capital markets or directly from financial institutions, up to a maximum of 100 billion Euros.

The decision to grant financial assistance would be up to the Council on the Commission's proposal, and it would contain the specific conditions of the loan to the concerned Member States such as *i)* amount; *ii)* duration; *iii)* costs; *iv)* technical arrangements for implementation.

The intiative identifies prudential rules applicable to the loan portfolio, which specify that if a Member State fails to make a repayment, the Commission could renew loans contracted for this purpose on behalf of the Union.

State Members will contribute to the instrument by providing a solidarity guarantee concerning the obligations that will be taken up by the EU so that if a Member State does not honor the

[7] See the full text of the Communication From The Commission To The Council on the activation of the general escape clause of the Stability and Growth Pact at https://ec.europa.eu/info/sites/info/files/economy-finance/2_en_act_part1_v3-adopted_text.pdf

request in the terms, the Commission would have the right to make additional requests to other Countries.

The operativity of the initiative would be subject to the allocation by the individual Member States, as a guarantee, of a total amount of 25 billion Euro, to be allocated according to gross national product.

The European Commission has described the SURE Fund as the "emergency materialization" of the European reinsurance scheme against unemployment, which has been debated in the EU for several years. It also stated that the approval of this temporary measure does not in any way preclude the future approval of a permanent scheme.

The European reinsurance scheme against unemployment should be financed by regular contributions from national programs, to which the European system would help if unemployment levels reached predetermined levels.