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ALERT MEMORANDUM

COVID-19 - First Measures Announced by the French Government to Support the Banking Sector's Effort to Finance Affected Businesses

March 19, 2020

On 17 March 2020, the French Minister for Economic Affairs announced the Government's intention to adopt a comprehensive package of measures aimed at limiting the economic and social repercussions of the COVID-19 crisis, including a EUR 300 billion State guarantee on loans to businesses facing a liquidity shock as a result of this crisis.

These measures are included in two draft bills which will be submitted to Parliament for adoption on 20 March 2020:

- A draft finance bill (*loi de finances rectificative*), setting out the conditions under which the French Government and Bpifrance, a State-owned bank whose mission is to finance and support entrepreneurs, will guarantee loans to affected businesses; and
- An draft emergency bill granting the executive branch broad powers to address the COVID-19 crisis and its economic and social repercussions.

This memorandum provides an overview of the EUR 300 billion State guarantee in favor of the banking sector, which complements measures already taken by EU banking authorities and by the *Banque de France*, described in our previous alert memorandum.[1]

We plan to update this memorandum as further measures specific to the banking sector are adopted and implemented in France.

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[1] https://www.clearygottlieb.com/-/media/files/alert-memos-2020/covid19-first-measures-adopted-by-eu-banking-authorities.pdf

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I. EUR 300 Billion State Guarantee on Loans to Affected Businesses

The draft bill proposes to grant a State guarantee on loans granted by credit institutions and finance companies between 16 March 2020 and 31 December 2020 to French companies experiencing a liquidity shock as a result of the COVID-19 crisis.

This State guarantee will cover the principal as well as interests and incidental charges of loans granted to French non-financial undertakings that are not insolvent, up to a total guaranteed amount of EUR 300 billion.

An order (*Arrêté*) from the Minister for Economic Affairs will specify the conditions that loans will be required to meet in order for the credit institution or finance company to benefit from the State guarantee, which will include: (i) a minimum deferred amortization period of 12 months, (ii) a clause enabling the borrower to amortize the loan over an additional 5 years period, and (iii) the institution not having reduced the funding granted to the undertaking between 16 March 2020 and the date on which the guarantee is granted.

The *Arrêté* from the Minister for Economic Affairs will also lay down the characteristics of the State guarantee, including (i) the conditions under which it may be called and (ii) the procedure the institution will have to follow in order to receive payment under the guarantee.

The draft bill also specifies that the State guarantee will (i) be subject to a fee, (ii) not cover the entire loan, and (iii) be callable after a waiting period that will be defined by the *Arrêté*.

In order to benefit from the State guarantee, the institutions will only be required to notify to Bpifrance Financement SA the loans granted to companies who employed less than 5 000 employees or whose turnover was below 1.5 billion euros during the last financial year. Such notification will be sufficient to benefit from the State guarantee, provided that the loans meet the conditions specified by the *Arrêté*.

As for loans granted to other companies, the State guarantee will be granted through the adoption of an *Arrêté* by the Minister for Economic Affairs.

The draft bill provides that a decree will be adopted to set out the conditions in which Bpifrance Financement SA will be in charge of administering the guarantee on behalf of the French Government. In particular, in the event of a call on the guarantee, Bpifrance Financement SA will be in charge of verifying that loans meet the conditions defined in the *Arrêté*, and of paying the sums due to the institutions. The State will then reimburse Bpifrance the sums paid under the conditions set out in an agreement that will be entered into with the Minister for Economic Affairs.

The draft emergency bill also includes a provision enabling the French Government to adapt the provisions relating to Bpifrance's organization within 3 months following the publication of the law.

II. Compatibility with the EU State Aid Framework

The explanatory memorandum indicates that the State guarantee will be notified to the Commission in the framework of the temporary framework on State which the Commission is in the process of adopting in connection with the Covid-19 crisis under Article 107(3)(b) TFEU.

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', provided that the disturbance affects 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.

On 17 March 2020, the Commission announced that it was proposing to Member States a new "Temporary Framework" aimed at applying Article 107(3)(b) TFEU to the COVID-19 crisis in the EU. This Temporary Framework, which is due to be adopted in the next few days, is inspired by the framework introduced during the 2008 financial crisis (and in force until 2011) under Article 107(3)(b) TFEU in order to allow exceptional aid measures to the real economy.

This Temporary Framework will complement the existing toolbox that the Commission outlined on 13 March 2020 for support to the economy, which also includes measures that do not qualify as aid, or measures that are aimed at compensating damage directly suffered as a result of the COVID-19 crisis (in particular in the transport or hospitality businesses).[2]

In particular, the Temporary Framework provides for the possibility to grant State guarantees or set up guarantee schemes supporting bank loans taken out by companies. These would have subsidised premiums, with reductions on the estimated market rate for annual premiums for new guarantees for SMEs and non-SMEs. There are some limits foreseen on the maximum loan amount, which are based on the operating needs of the companies (established on the basis of the wage bills or liquidity needs). The guarantees may relate to both investment and working capital loans.

The State guarantee announced by the French government appears to fit within these broad parameters, although the details of the amounts that will be contained in the Temporary Framework are still under consideration.

Importantly, the Commission proposal makes clear that measures aimed at channelling liquidity aid to the real economy through the banks constitute aid to the bank's customers, not to the banks themselves, and that guarantees such as the State guarantee are not considered as extraordinary public financial support ("EPFS") for the purpose of the Bank Recovery and Resolution Directive, which entails that they do not trigger placement in resolution.

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[2] See Cleary Gottlieb alert memo available here.