Analysis of the European Union COVID-19-Related State Aid Rules and Their Application in the Croatian Maritime Sector

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The paper presents the possibilities that Member States have under *Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak* to subsidise undertakings having liquidity problems or suffering damage because of the COVID-19 outbreak. Under the European Union Law, State aids are forbidden. However, some exceptions from that general rule are expressly provided for by the *Treaty on the Functioning of the European Union*. The Member States mostly used Article 107, paragraphs (2) and (3) of the Treaty as a legal basis for subsidising their economies in the COVID-19 pandemic, which has been qualified as an exceptional occurrence causing a serious disturbance in the economies of Member States. In the decisions authorising the State aid granted due to the COVID-19 crisis, the European Commission referred to its previous decision-making practice and the case-law of the Court of Justice of the European Union. Finally, the paper analyses the national State aid scheme that the Republic of Croatia adopted to support undertakings performing economic activities in the maritime and related sectors, based on the relevant EU regulations.

KEY WORDS

~ COVID-19
~ EU State aid Law
~ Croatian Maritime sector
~ COVID-19 Temporary Framework
~ Croatian State aid Scheme to support the maritime sector

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1. INTRODUCTION

According to the European Commission's services analysis contained in the *Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak* (hereinafter: the TF), economic sectors most affected by the containment measures adopted by the Member States because of the COVID-19 pandemic are health, tourism, culture, retail, and transport.[1]

As regards the transport sector, it should be pointed out that lockdowns, quarantines, travel restrictions, and other containment measures minimised mobility. It caused disruptions in supply chains, and a decrease in tourism, and generally reduced the movement of persons and goods. Because of the COVID-19 outbreak, many undertakings, especially micro, small- and medium-sized enterprises (hereinafter: SMEs) have suffered damage or/and have encountered a lack of liquidity. The European Union (hereinafter: EU) Law authorises the Member States to subsidise undertakings, including those in the maritime sector, influenced by the consequences of exceptional occurrences, such as war, global economic crisis, pandemics, etc. However, Member States need to ensure that State aid awarded to undertakings complies with the *Treaty on the Functioning of the European Union* (hereinafter: TFEU), and the EU secondary legislation as interpreted by the Court of Justice of the EU and the European Commission.

With the adoption of the TF on 19 March 2020, the European Commission has permitted the Member States to grant high levels of State aid to undertakings affected by the COVID-19 pandemic in most economic sectors. The Commission has drafted the TF using its previous decision-making practice and especially its experience gained during the global financial crisis that commenced in 2008. The stipulation of aid ceilings and criteria for the award of aid in the TF increases legal certainty and provides that national State aid measures are proportionate and do not distort competition in the internal market (Ferri, 2021).

This paper is focused on the analysis of the TF and national State aid scheme (Bacon *et al*, 2013)[2] that the Republic of Croatia (hereinafter: Croatia) applied to subsidise undertakings operating in the maritime sector, based on that Framework.

2. EU STATE AID LAW AND COVID-19 PANDEMIC - GENERAL REMARKS

According to Article 107 TFEU, State aid consists of "any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, in so far as it affects trade between the Member States". Under EU Law, State aids are forbidden because considered incompatible with the internal market.

The TF envisages the possibilities that Member States have under the EU rules to ensure access to finance for undertakings experiencing liquidity problems or suffering damage because of the COVID-19 pandemic. These provisions are the legal basis for the award of State aids.

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1. Communication from the Commission, *Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak*, adopted on 19 March 2020 (C(2020) 1863)- as amended C(2020) 2215 of 3 April 2020, C(2020) 3156 of 8 May 2020, C(2020) 4509 of 29 June 2020, C(2020) 7127 of 13 October 2020, C(2021) 564 of 28 January 2021, and C(2021) 8442 of 18 November 2021, point 3.
2. Aid scheme is an act on the grounds of which, without subsequent implementing measures being necessary, individual aid may be awarded to undertakings defined by that act in a general and abstract way. Individual aid means *ad hoc* aid or aid granted to individual beneficiaries based on an aid scheme.

Firstly, Member States may create horizontal measures applicable to undertakings in all sectors, such as wage subsidies, suspension of payments of corporate and value-added taxes, or social welfare contributions. These measures do not constitute State aid since they are not selective. Also, financial subsidy granted to consumers for services not provided due to the virus outbreak or tickets not recompensed by the operators in question does not constitute State aid because it is not awarded to undertakings.

Secondly, some exceptions from the prohibition of State aid are provided for by the TFEU and its implementing regulations. The first group of measures from this category may also be implemented without prior notification to the Commission. These are aids awarded in line with the *General Block Exemption Regulation* (hereinafter: GBER) and Block Exemption Regulation applicable in the fishery and aquaculture sectors.[3]

In addition, there is another group of derogations from the prohibition of State aid, stipulated in Article 107, paragraphs (2) and (3) TFEU. For the implementation of measures pursuant to these legal bases, a prior approval from the Commission is necessary.

According to the European Commission's decision-making practice, the Member States may award State aids in case of natural disasters or exceptional occurrences in accordance with Article 107(2)(b) TFEU. State aid under Article 107(2) TFEU may be granted even if undertakings had already been in difficulty, within the meaning of Article 2(18) GBER, before the COVID-19 outbreak, i.e. before 31 December 2019. That date is presumed as the beginning of the COVID-19 pandemic for the purpose of application of the TF.

In compliance with Article 107(3)(b) TFEU, State aid intended to remedy a serious disturbance in the economy of a Member State is also considered compatible with the internal market and it is exempted from the prohibition of State aid from Article 107(1) TFEU. It should be pointed out that Article 107(3)(b) TFEU was a legal base for adopting the European Commission's instruments called Temporary Frameworks. In recent years, these legal instruments have been used to support the economies of the Member States in case of several emergencies that occurred. The *Temporary Community Framework for State aid measures to support access to finance in the current financial and economic crisis* was adopted after the outbreak of the global financial crisis in 2008 for the support of the banking sector.[4] In March 2022, *Temporary Crisis Framework* was adopted to deal with problems caused by the war in Ukraine, in particular, disruption in supply chains and sources of food and energy, and to compensate for the damage to exporters from the EU to Russia caused by the EU sanctions against Russia.[5] Also, as mentioned above, the first version of the TF, analysed in more detail in this paper was adopted on 19 March 2020, (i*nfra*, point 4).

Lastly, based on Article 107(3)(c), TFEU Member State may award State aids in compliance with the criteria prescribed in *Rescue and Restructuring Guidelines* (hereinafter: RRG)[6] to subsidise undertakings that had previously been in difficulty, before the COVID-19 pandemic, and when the financial position of an undertaking in question was further aggravated by the COVID-19 outbreak. In this case, the principle of "one time last time" of the RRG, meaning that aid can be granted to undertakings in difficulty only for one restructuring activity, is applicable.

3. For more details see OJ L 187 of 26.6.2014, p. 1. and OJ L 369, 24.12.2014, p. 37.
4. *O J,* C 16, 22.1.2009, p. 1–9*.*
5. O J, C 131 I, 24.3.2022, p. 1–17.
6. OJ C 249, 31.7.2014, p.1.

3. PECULIARITY OF COVID-19 AS EXCEPTIONAL OCCURRENCE

As explained above, under Article 107(2)(b) TFEU, State aid awarded to make good the damage caused by natural disasters or exceptional occurrences is an exception from the prohibition of State aid within the internal market from Article 107(1) TFEU. This provision implies that aid may be granted under the following terms: (i) the event is classified as a natural disaster or exceptional occurrence; (ii) there is a direct link between the damage and the natural disaster or exceptional occurrence; and (iii) State aid in case of exceptional occurrences must not result in overcompensation of the damage (Ferri, 2021). The term natural disaster includes earthquakes, avalanches, landslides, floods, and other detrimental climatic conditions.[7] However, the TFEU and other Union legislation do not define the concept of exceptional occurrence. The classification of an event as an exceptional occurrence is made by the Commission case-by-case. It should be pointed out that the events classified as exceptional occurrences in the previous Commission's decision-making practice are war, internal disturbances or strikes, and major nuclear or industrial accidents. [8]

The event may be qualified as an exceptional occurrence, pursuant to Article 107(2) TFEU when the following cumulative conditions are met: firstly, the event is unforeseeable, or difficult to foresee; secondly, it has a significant economic impact; and thirdly, the event is extraordinary, significantly different compared to the conditions under which the market is ordinarily functioning.[9] In its decision regarding the Danish Compensation scheme for the cancellation of events related to COVID-19, the Commission established that the above-mentioned conditions are met and consequently qualified the COVID-19 disease as an exceptional occurrence within the meaning of Article 107(2) TFEU.[10] In that decision, the Commission concluded: "… this event qualifies as an exceptional occurrence as it was not foreseeable, as it clearly distinguishes itself from ordinary events by its character and by its effects on the affected undertakings and the economy in general and therefore lays outside of the normal functioning of the market."[11] The Commission referred to the *World Health Organization* (hereinafter: WHO) which on 11 March 2020 characterised the COVID-19 disease as a pandemic."[12]

In line with the EU case law, the notions of natural disaster and exceptional occurrence referred to in Article 107(2)(b) TFEU, constituting an exception from the principle laid down in Article 107(1) TFEU that State aid is incompatible with the internal market, must be interpreted restrictively.[13] Additionally, the Court of Justice of the EU ruled that only economic difficulties directly caused by natural disasters or exceptional occurrences may be compensated by the Member States on the basis of Article 107(2)(b) TFEU.[14]

As a consequence, the Commission also took the stand that aid granted on the basis of Article 107(2)(b) TFEU may redress only the damage directly caused by the COVID-19 pandemic, such as damage directly caused by restrictive measures precluding the aid recipient, *de jure* or *de facto*, from performing its economic activity (point 15bis TF). Under the TF, these restrictive measures may include in particular measures that cause the termination of economic activity such as the closure of restaurants or non-essential shops, or its interruption in certain areas, such as restrictions of flights or other transport modes to or from specific locations, or the exclusion of some categories of clients, such as leisure travellers or school trips and also measures preventing

7. Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020, OJ C 204, 1.07.2014, p. 53, para 34 and paras 327 et seq.
8. *Ibidem*, para. 330.
9. Commission Decision of 12.3.2020 on the aid scheme State Aid SA.56685 (2020/N) – DK – Compensation scheme for cancellation of events related to COVID-19, Brussels, 12.3.2020 C(2020) 1698 final, para.25.
10. *Ibidem*, paras 26-30.
11. *Ibidem*, para. 29.
12. WHO, Coronavirus disease 2019 (COVID-19) – Situation Report 50, 10 March 2020.
13. For more information see Judgement of the Court of Justice of 11 November 2004, Spain v. Commission, C-73/03, ECLI:EU: C:2004:711, para. 37 and judgment of the Court of Justice of 23 February 2006, Giuseppe Atzeni and others, in joined cases C-346/03 and C-529/03, ECLI:EU: C:2006:130, para. 79.
14. See, Judgment of the Court of Justice of 29 April 2004 in Case C-278/00 Greece v Commission, EU: C:2004:239, paras 81-82; Judgment in Case T-268/06 Olympiaki Aeroporia Ypiresies v Commission, EU: T:2008:222, para. 49.

attendance for specific activities such as entertainment, trade fairs, and sports events. On the contrary, other measures such as social distancing or sanitary constraints would not meet the conditions of Article 107(2)(b) TFEU.

Member States have used this legal base to compensate undertakings in sectors that have been especially strongly affected by the COVID-19 pandemic, such as undertakings in the airline sector[15] and in other strongly affected sectors such as media and restaurant sectors, and also undertakings that suffered losses due to cancellations of large public events (Riedel, Wilson and Cranley, 2020).

4. SPECIFIC STATE AID MEASURES FOR MINIMISING ECONOMIC CONSEQUENCES OF COVID-19 PANDEMIC

4.1. Introductory note

As mentioned above, the first version of the TF was adopted on 19 March 2020. So far, the Commission has modified this Framework six times, as the impact of the economic crisis and the necessity for aid have been changing. The TF has five sections. It applies to almost all economic sectors including transport, and outlines transport as one of the sectors strongly affected by the COVID 19 pandemic.

The first section of the TF discusses the influence of COVID-19 on the EU economy, its exceptional character and the necessity for specific temporary measures. As previously explained, it also presents the different options that the Member States already have under the TFEU and its implementing regulations to support undertakings experiencing liquidity problems (*supra,* point 2).

The second section of the TF explains the compatibility conditions that the Commission will use for the assessment of measures under Article 107(3)(b) TFEU. Under Article 107(3)(b) TFEU, the Commission may consider compatible with the internal market an aid to remedy a serious disturbance in the economy of a Member State. The Union courts have ruled that a disturbance is serious when it affects “the whole or an important part of the economy of the Member State in question, and not only the economy of its regions or parts of its territory”.[16] The Commission deems that Article 107(3)(b) TFEU must be interpreted narrowly which stems also from its previous decision-making practice.[17] Additionally, the Commission emphasises that State aid on the basis of Article 107(3)(b) may be granted “for a limited period”, to deal with the liquidity problems encountered by undertakings and to ensure that the interruptions in the provision of economic activities due to the COVID-19 virus do not endanger the undertaking’s viability, especially the viability of SMEs (point 18 TF). For that reason, the TF was passed for a limited period and has been prolonged several times, each time for a limited period.

The third section, which will be analysed below, is dedicated to the new types of State aid measures that the Member States may award, on the Commission's authorisation, under the TF.

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15. For more information see Commission Decision of 24 April 2020 on the aid measure SA.57061 regarding Swedish compensation for the damage caused by the COVID-19 outbreak to Scandinavian Airlines, Brussels, 24.4.2020 C(2020) 2784 final and Commission Decision of 26 April 2020 on the aid measure State aid SA.56867 (2020/N) regarding German support for Condor, Brussels, 26.7.2021 C (2021) 5729 final.
16. For more details see 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.
17. See, *inter alia* 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 2008/263/EC in Case C 50/06 BAWAG (OJ L 83, 26.3.2008, p. 7), point 166.

4.2. State aid measures provided for in TF

Under the TF, the Member States may choose between different types of State aid measures, as listed in Sections 3.1 to 3.14 of that Framework. These are 3.1 Limited amounts of aid, 3.2 Aid in the form of guarantees on loans, 3.3 Aid in the form of subsidised interest rates for loans, 3.4 Aid in the form of guarantees and loans channelled through credit institutions or other financial institutions, 3.5 Short-term export credit insurance COVID-19 relevant research and development, 3.6 Aid for COVID-19 relevant research and development, 3.7 Investment aid for testing and upscaling infrastructures, 3.8 Investment aid for the production of COVID-19 relevant products, 3.9 Aid in form of deferrals of tax and/or of social security contributions, 3.10 Aid in form of wage subsidies for employees to avoid lay-offs during the COVID-19 outbreak, 3.11 Recapitalisation measures, 3.12 Aid in the form of support for uncovered fixed costs, 3.13 Investment support towards a sustainable recovery, and 3.14 Solvency support. The above-mentioned State aid measures can be implemented only after the Commission's prior approval. This paper is limited to the analysis of those categories of State aid measures that Croatia designed on the basis of the TF to subsidise undertakings operating in the maritime sector.

Section 3.1 TF addresses sudden liquidity shortages or unavailability of liquidity, in particular of SMEs. Pursuant to this section, Member States may award State aid in the form of direct grants, tax, and payment advantages, repayable advances, loans, and equity with the fulfilment of the prescribed conditions: (1) The amount of aid is limited, and it does not go beyond EUR 2.3 million per undertaking. Under the first version of the TF, the ceiling was up to EUR 800,000 per undertaking and has been raised progressively. In addition to the above-mentioned conditions, specific rules, including lower aid limits apply to aid granted to undertaking in the agriculture, fishery, and aquaculture sectors (point 23 TF); (2) The State aid is granted in the frame of a scheme with a previously calculated budget; (3) Recipients were not in difficulty before the COVID-19 outbreak (*supra*, point 2). On the contrary, pursuant to points 22(c) bis TF, aid can be granted to micro or small enterprises, as defined in Annex I of the GBER, already in difficulty on 31 December 2019. Under Annex I, Article 2 of the GBER, the concept of micro, small and medium-sized enterprises (SMEs) covers enterprises that employ less than 250 workers and which have an annual gross revenue not exceeding EUR 50 million, and/or an annual balance sheet does not go beyond EUR 43 million. Within the SME concept, a small enterprise is defined as an enterprise that employs less than 50 workers and whose gross revenue and/or annual balance sheet does not go beyond EUR 10 million. Further, within the SME concept, a micro-enterprise is defined as an enterprise that employs less than 10 workers and whose annual gross revenue and/or annual balance sheet does not go beyond EUR 2 million. The rationale behind this provision was that, under the TF, Member States would be allowed to subsidise only viable undertakings; (4) The aid is granted before 30 June 2022 (the deadline until which the guidelines were last extended). In other words, the TF is, as its name suggests, of limited duration and further prolongation of the TF regarding this type of aid is not planned.

Sections 3.2 and 3.3 TF provide for State aid ensuring access to liquidity in the form of new public guarantees on individual loans and interest rate subsidies. The TF stipulates a number of criteria that those types of aid must meet, such as: (1) The guarantee premiums are set at the level prescribed by the TF; (2) The guarantee cannot be granted after the expiry of the period until which the guidelines were last extended; (3) For loans that mature beyond the deadline until which the guidelines were last extended, the amount of loans per undertaking does not exceed double the annual wage bill of the undertaking for 2019 or for the last year accessible, or 25% of its turnover in 2019. For loans that mature before that deadline amount of the loan principal may be higher; (4) The guarantee may not cover: more than 90% of the loan principal where losses are defrayed proportionally by the creditor and the State, or 35% of that loan where losses are first ascribed to the State and then to the creditor; (5) The aid in the form of guarantee may be awarded for both investment and/or working capital needs.

With regard to aid in the form of subsidised interest rates for loans, the reduced interest rates should be aligned with terms specified in Section 3.3 TF. (Kubera, 2021). Additional requirements are prescribed in cases when aid is granted through financial institutions as intermediaries (Section 3.4 TF). This type of aid may also give an indirect advantage to financial institutions. Therefore, pursuant to the TF, financial intermediaries are obligated to transfer the benefits of the public guarantees or subsidised interest rates on loans to the final beneficiaries of aid because the TF does not aim to subsidise the financial sector.

The provisions of Section 3.11 Recapitalisation measures of the TF enable the Member States to grant State aid in the form of equity and/or hybrid capital instruments to undertakings in financial difficulties due to the COVID-19 pandemic. This type of aid should be used as a "last resort" which means only if no other funding can be obtained (Riedel, Wilson, Cranley, 2020). In order to avoid undue distortions of competition, the COVID-19 recapitalisation measure must meet the rigorous conditions, as follows: (1) If there is no State intervention the recipient would go out of business or would have serious problems in keeping it; (2) It is in the common interest for the State to intervene; (3) There is no affordable funding on the markets; and (4) Aid may not be granted to undertakings that were previously in difficulty (*supra*, point 4.2).

Further, beneficiaries of aid in question must fulfil the following requirements: (1) If the recipient of aid over EUR 250 million is a company with substantial market power the Member States must put forward for consideration measures to protect competition, as foreseen in the relevant EU regulations; (2) The recipients of a COVID-19 recapitalisation measure are banned from advertising the aid; (3) Until 75% of the COVID-19 recapitalisation measures have not been repurchased, non-SMSs beneficiaries are not allowed to obtain more than 10% share in companies in the same sector; (4) State aid should not be used to cross-subsidise the recipients' integrated undertakings; (5) Until the COVID-19 recapitalisation measures have not been totally repurchased, beneficiaries cannot make dividend and similar payments, except to the State.

Above that, if six years after the recapitalisation (seven years for SMEs and publicly non-listed companies), the State's intervention has not decreased under 15% of equity, the Member State must present a restructuring plan in accordance with the RRG (points 79 and 85 TF).

Under Section 3.12 Aid in the form of subsidy for uncovered fixed costs*,* of the TF, the Member States may grant State aid to undertakings experiencing a decline in turnover of at least 30% compared to the relevant period of 2019 due to the COVID-19 pandemic, during the eligible period (1 March 2020 to 30 June 2022). The subsidy may contribute to the settlement of the beneficiaries' fixed costs up to a maximum amount of EUR 12 million per undertaking. Uncovered fixed costs are defined in the TF as fixed expenses made within the eligible period, not covered by the recipients' profits and by other sources, such as insurance or temporary aid measures covered by the TF or subsidies from other sources. The intensity of aid may not go above 70 % of the uncovered fixed costs (or 90 % of these costs for micro and small enterprises). Also, aid cannot be granted to companies previously in difficulty (*supra,* point 4.2).

5. CROATIAN STATE AID SCHEME TO SUBSIDISE MARITIME AND RELATED SECTORS INFLUENCED BY COVID-19

In accordance with Sections 3.1, 3.2, and 3.3 TF, Croatia designed State aid measures that consist of public guarantees on new loans from banks or other financial institutions, and loans to large undertakings and SMEs active in the maritime, transport, transport infrastructure, tourism and related sectors, granting these undertakings liquidity loans on preferential terms. In addition to that, under the same scheme, aid pursuant to Section 3.12 Aid in the form of support for uncovered fixed costs, of the TF may be awarded. Lastly, under this scheme, State aid in accordance with Section 3.11 Recapitalisation measures, of the TF may be granted.

Measures were introduced by the *Decision of the Croatian Government*,[18] after the Commission's approval.[19] This aid scheme has been changed and prolonged several times. The eligible beneficiaries are, among others, undertakings registered in Croatia to perform activities in the maritime sector according to the statistical classification of economic activities in the EU, such as sea and coastal passenger water transport, sea and coastal freight water transport, warehousing and storage, support activities for transport, renting and leasing water transport equipment, building of ships and floating structures, and repair and maintenance of ships and boats.[20] With the changes of the Croatian scheme supporting the maritime sector from June 2022, undertakings registered in Croatia to perform activities of nautical tourism ports are not eligible beneficiaries of aid under that scheme anymore because it is established that these undertakings are not so strongly impacted by the COVID-19 crisis as other undertakings in the maritime sector listed above.

For the measures pursuant to Sections 3.1 and 3.2., granting authorities are the Ministry of the Sea, Transport and Infrastructure (hereinafter: MMPI), the state-owned bank *Croatian Bank for Reconstruction and Development* (hereinafter: HBOR) for large undertakings, and the *Croatian Agency for SMEs, Innovations, and Investments HAMAG-BICRO* (hereinafter: HAMAG-BICRO) for SMEs.

As mentioned above, aid may be granted in the form of public guarantees on new working capital loans. It is based on Section 3.1. TF and it is channelled through financial institutions as intermediaries in compliance with Section 3.4 TF. The following conditions must be obeyed: (a) The guarantees awarded may relate only to working capital loans. It should be pointed out that under the TF, aid may be granted also for investment needs. Such aid is less harmful to competition than aid granted for working (operative) needs. Therefore, there is no obstacle for Croatia to grant aid for investment purposes as well; (b) The total nominal value of guarantees issued by HBOR and HAMAG-BICRO is limited and may not exceed EUR 1,800,000 per beneficiary (under the first version of the scheme EUR 800,000). The measure covers the repayment of 100% (under the first version of the scheme 90%) of the underlying loan; (c) The guarantee can be mobilised under the terms stipulated in the contract concluded between the parties when the guarantee is awarded; (d) The guarantee may be issued for a loan from financial institutions to an undertaking for a minimum of 1 to 5 years maximum; (e) Recipient has to prove that liquidity problems are caused by the COVID-19 pandemic in the required amount of aid; (f) Only new loans may be subsidised by this scheme; (g) Aid cannot be granted to companies previously in difficulty (*supra,* point 4.2); (h) The measure stipulates the level of the guarantee premium; (i) The guarantee must be passed off until the deadline by which the guidelines were last extended (*supra*, point 4.2); (j) The Croatian authorities will introduce safety measures in relation to the potential indirect aid for the benefit of the intermediaries, as stipulated in Section 3.4 TF.

If the nominal value of the guarantee exceeds the ceiling of EUR 1,800,000, (under the first version of the scheme EUR 800,000), State aid is granted in the form of a guarantee regulated in Section 3.2 TF. State aid is also channelled through financial institutions, as described in Section 3.4 TF. In this case, under the Croatian State aid scheme, subsidising the maritime sector aid may be granted under the conditions equal to those prescribed in Section 3.2 TF when it comes to the eligible recipients and loans, amount and duration of the loan covered by the measure in question, time until when the aid may be granted, percentage of the loan covered by the guarantee and level of the guarantee premium.

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18. Odluka o usvajanju programa dodjele državnih potpora sektoru mora, prometa, prometne infrastrukture i povezanim djelatnostima u aktualnoj pandemiji COVID-A 19, Official Gazette of the Republic of Croatia of 3 July 2020 no. 20020(77) - as amended 2020(116), 2021(5), 2021(114), 2021(41), 64/2022(64), 72/2022(72), (hereinafter: The Decision of the Croatian Government).

19. For more information see State aid SA.57711 (2020/N)– Croatia COVID-19: State aid Scheme to support the maritime, transport, transport infrastructure, tourism, and related sectors impacted by the COVID-19 outbreak - as amended by SA.58128 (2020/N), SA.58136 (2020/N), SA.59924 (2020/N), SA.59942 (2020/N), SA.64375 (2021/N), SA.100913 (2021/N) and SA.103135 (2022/N).

20. *Ibidem*, para.12.

In compliance with Section 3.12 Regulating subsidies for uncovered fixed costs, State aid may be granted to undertakings operating in the maritime sector in the form of direct grants. Administration of the measure is in the competence of the MMPI. Under the measure, aid may be granted the deadline until which the guidelines were last extended (*supra*, point 4.2). Eligible recipients are large enterprises and SMEs active in the maritime and related sectors for which the COVID-19 outbreak caused suspension or reduction of their business activity.[21]

In this context, the Croatian authorities emphasised that the Croatian economy was strongly affected by the crisis caused by the COVID-19 pandemic since "Croatia is a small and open economy with an overdependence on tourism. In particular, the Croatian authorities explained that the implementation of the epidemiological measures restricted freedom of movement and free labour activities and caused a major negative impact on the sectors concerned by the measure…"[22] Also, beneficiaries must have recorded a decrease in turnover of 30% minimum, compared to the relevant period in 2019. The intensity of aid may not go beyond the limits from point 87(c) TF. Therefore, this Croatian state aid measure is aligned with that Framework.

In the frame of the same State aid scheme, Croatia designed an aid measure under Section 3.3 TF regulating subsidised interest rates for loans. Loans under this measure can be granted for a limited time and must be necessary to deal with the crisis caused by the COVID-19 pandemic. Loans will be approved by MMPI and may be approved only for working and not for investment capital needs, at reduced interest rates that are at least equal to the base rate calculated in accordance with the relevant EU regulations and the *Decision of Croatian Government* on this State aid scheme.[23]

In Croatia recapitalisation measures pursuant to section 3.11 TF can be granted to large undertakings that are in financial difficulties due to the COVID-19 pandemic. Thus, they will be provided with the public subsidy in the form of equity and/or hybrid capital instruments.

When applying the recapitalisation measures, it is necessary to pay special attention to the relevant provisions of the TF determined in Section 3.11, especially in terms of preventing unjustified distortion competition as prescribed in Subsection 3.11.6 (*supra,* point 4.2). Regarding the recipient's eligibility for support, it is necessary to prove that the recipient would go out of business or would have faced serious difficulties in maintaining his business, without government intervention. In particular, eligible users must record a significant decline in turnover in the relevant period of 2020 and 2021, compared to the relevant period in 2019 and/or in 2022, expect business results at least 20% below the results achieved in 2019, eligible users must prove that their debt-to-equity ratio significantly worsened compared to December 31, 2019. In addition to the conditions for the implementation of the increase in the capital of eligible beneficiaries of this measure, the clearly established conditions for the State's entry and its exit from the undertaking's equity capital and the payment of compensation, as well as provisions regarding management and appropriate measures to limit the distortion of competition have been established by the *Decision of the Croatian Government*[24] in compliance with the relevant provision of the TF (*supra,* 4.2).

21. State Aid SA.101061 (2021/NN) – Croatia COVID-19: Support to undertakings active in the maritime, transport, and transport infrastructure sectors for uncovered fixed costs under the TF 3.12, C(2022) 1996 final, Brussels, 28.3.2022, point 17.
22. *Ibidem*, point 4.
23. The Decision of the Croatian Government, Official Gazette of the Republic of Croatia of 3 July 2020 No. 2020(77) - as amended in No. 2022(72), Section XI.

24. Ibidem, section XII.

Considering all the above mentioned, the Commission deems that the State aid under the scheme that Croatia notified due to the COVID-19 pandemic and the related economic crisis is necessary, appropriate, and proportionate to remedy a serious disturbance in the Croatian maritime and related sectors in accordance with Article 107(3)(b) TFEU, since it meets all the requirements from the TF. Consequently, the Commission decided not to raise objections to the aid in question.

6. CONCLUSION

In recent years, several events may be classified as exceptional occurrences, such as the global financial crisis that began in 2008, COVID-19 pandemic, and the war in Ukraine. Under the EU Law, the Member States have many options for supporting their economies in such cases. The ones most used are Temporary Frameworks that are being enacted by the European Commission. State aid awarded on the basis of these legal instruments is subject to the Commission's prior authorisation and is limited in time. The eligible beneficiaries of State aid are viable undertakings having financial problems due to the coronavirus pandemic, the ones already in difficulty before the coronavirus pandemic are explicitly excluded. In addition, the Member States must respect the aid ceilings and criteria for the award of State aid, stipulated in the Temporary Frameworks.

The TF introduces the specific types of aid that the Member States may award to the undertakings affected by the restrictive measures applied because of the COVID-19 outbreak.

So far, the Commission has brought over 1,300 decisions authorising national State aid measures adopted due to the COVID-19 crisis. The total amount of State aid authorised by the European Commission under the TF is almost € 3.2 trillion. The TF will not be extended after 30 June 2022 for most of the types of aid measures specified in that Framework. The Member States will have the possibility to grant certain investment and solvency subsidies under TF until 31 December 2023 (see points 23.ter., 27.ter., 41., 99. of the TF).

Croatia designed specific State aid measures to support the maritime and related sectors affected by the COVID-19 crisis, in compliance with the TF, which were analysed in this paper.

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CONFLICT OF INTEREST

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

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