



FRANCE TO GUARANTEE BANK LOANS FURTHER TO THE CORONAVIRUS CRISIS

As Coronavirus (COVID-19) spreads, France has announced several measures aimed at countering the economic repercussions of the epidemic. Among such measures, a guarantee to be granted by the French state for new bank loans for a total amount of EUR 300 billion. Such measures are state aid cleared under the [EU Commission's revised framework](#)

An emergency bill to deal with the COVID-19 epidemic was presented on 18 March to the French Council of Ministers, notably detailing the guarantee given by the French state for new loans granted by credit institutions and French financing companies (*sociétés de financement*) for a total amount of EUR 300 billion. This unprecedented decision was announced by the French President of the Republic in his speech on 16 March as part of the measures put in place to support the economy in response to the COVID-19 crisis and confirmed on 17 March in a statement by the French Minister of Economy and Finance.

The bill was adopted by the French Parliament on 20 March 2020 ([LFR 2020](#)) and will become effective after promulgation in the coming days ("**LFR 2020**").

LFR 2020 contains a number of measures to counter the economic effects of the COVID-19 epidemic, among which the guarantee given by the French state for new loans granted by credit institutions and French financing companies. The purpose of this guarantee is to meet the financing needs of those French companies whose activity is undergoing a brutal shock following the health emergency measures taken by the authorities since 5 March 2020 and reinforced on 14 March 2020, and more generally to meet the overall decline in demand. Such guarantee should allow facilitating loans being granted to companies experiencing temporary cash flow issues as the result of the COVID-19 crisis, which could be detrimental notably to employment sustainability and economic outlook in general.

LFR 2020 is notably complemented by an order of the Minister of the Economy and Finance dated 23 March 2020 (the "**LFR Order**") and coming into force on 25 March 2020 (together with LFR 2020, the "**LFR Regime**") which has laid down the specific terms and conditions of the loans being subject to the guarantee (the "**Terms and Conditions**").

Key points

- On 18 March an emergency bill was presented to the French Council of Ministers to deal with the COVID-19 epidemic, which provides for a state guarantee for new bank loans for a total amount of EUR 300 billion.
- The bill was adopted by the French Parliament on 20 March.
- Only loans to French non-financial businesses granted during the period between 16 March 2020 and 31 December 2020 will benefit from the French State guarantee subject to certain terms and conditions (as will be laid down by ministerial order) being met.
- The terms and conditions of the guarantee shall meet certain requirements further specified by a ministerial order dated 23 March 2020.
- Loans to businesses having less than 5,000 employees or a turnover of less than EUR 1.5 billion will automatically benefit from the guarantee upon notice, provided that the requirements are met. For other companies, a prior approval would be required.
- Bpifrance Financement is commissioned by the French state with servicing the guarantee on its behalf.

Similar measures are being adopted by other governments in Europe and at EU level with the 750 billion Pandemic Emergency Purchase Programme (PEPP) announced by the European Central Bank ([press release](#)).

IN-SCOPE LOANS

Only loans to non-financial¹ businesses (whether legal or natural persons, self-employed, farmers, etc.), excluding real estate companies (*sociétés civiles immobilières*) registered with the *répertoire national des entreprises et des établissements*, which are granted during the period starting on (and including) 16 March 2020 and ending on (and including) 31 December 2020 may benefit from the French State guarantee, subject to certain requirements being met. In other words, outstanding loans extended prior to 16 March 2020 are excluded from the scope of the guarantee. As such, in order to ensure that the guarantee is properly targeted towards loans meeting the particular needs of businesses in this context, the LFR Order provides for a number of conditions including:

- a repayment deferral period of at least 12 months;
- an option offered to the Borrower to extend the repayment of the loan over additional yearly periods, up to a maximum number of five years;
- a ban on obtaining additional security or guarantee on the loan, other than that of the LFR Regime; and
- where several loans eligible to the guarantee are extended to the same borrower, the aggregate maximum amount of such loans (in principal and interest) does not represent: (i) regarding businesses set up as from 1 January 2019, more than the amount of the total payroll (*masse salariale*) recorded in France during the first two year of activity; and (ii) regarding businesses set up prior to 1 January 2019, more than 25% of the borrower's turnover in France in 2019².

The lending institution shall be a credit institution (which is meant to include EU credit institutions passported into France, as well as French branches of third country banks licensed by the *Autorité de contrôle prudentiel et de résolution*, "ACPR") or a financing company (*société de financement*) licensed by the ACPR.

It is worth noting that unfortunately other lenders which have become financing partners of the real economy, which include alternative investment funds (AIFs) and insurance companies, both authorised to lend to non-financial businesses subject to certain conditions, are *ipso facto* excluded from the benefit of the State guarantee.

Further, to benefit from the State guarantee, the lending institution shall have refrained from reducing its outstanding facilities compared to their amounts as at 16 March 2020, unless the borrower instructed otherwise.

TERMS AND CONDITIONS OF THE GUARANTEE

In order to ensure a proper alignment of interests between the French state and the lenders, and in order to protect public finances, the LFR Regime

¹ i.e. more precisely, the borrower shall not be a credit institution or a financing company (*société de financement*).

² Exceptions should be introduced as regards innovative businesses within the meaning of article D. 313-45-1, II of the French Code on the Entry and Residence of Foreigners and the Right of Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*).

provides for certain terms of the State guarantee, to be supplemented by the Terms and Conditions. According to the LFR Regime, the guarantee:

- shall be remunerated (the amount of the guarantee fee depends on the size of the business and the maturity of the covered loan and ranges from 25 to 200 basis points per annum);
- can only cover between 70% and 90% of the full principal amount of the loans benefiting from such guarantee, such percentage set pursuant to the size of the business:
 - 90% of the loan (in principal and interest) for businesses with a turnover of less than EUR 1.5 billion and employing in France more than 5,000 employees;
 - 80% of the loan (in principal and interest) for large businesses with a turnover between EUR 1.5 billion and EUR 5 billion; and
 - 70% of the loan (in principal and interest) for other businesses.
- cannot be called in relation to loans in respect of which a credit event occurs within two months after it was made available to the borrower; and
- cannot benefit to businesses which are subject to French insolvency proceedings.³

Further, it must be noted that the EUR 300 billion maximum amount of the guarantee covers all amounts in principal, interests and incidental costs of the guaranteed exposures.

The indemnified loss payable by the State under the guarantee (subject to the guarantee quota) shall be determined on the basis of the actual loss by the lender after the latter's exercise of any court or out of court recourses against the borrower to recover its claim, where they will have been capable of being normally exercised or, failing which, upon a petition for the opening of an insolvency proceeding following the occurrence of a credit event.

The LFR Order sets out details for the calculation of the indemnifiable loss depending on whether the loss is incurred by the lender under the completion of pre-insolvency/amicable arrangements with the creditors (e.g. mandat ad hoc or conciliation) or in connection with insolvency proceedings.

PROCEDURE AND MONITORING

In order to meet a potentially large and urgent demand, LFR 2020 provides that:

- with respect loans extended to businesses having less than 5,000 employees or a turnover of less than EUR 1.5 billion, eligible loans will automatically benefit from the state guarantee provided that they meet **all the Terms and Conditions**, upon the service of a mere notice by the lending institution identifying such loans on Bpifrance Financement acting on behalf of the French State (in practice, the notice is made *via* a secured and centralized system using a standardised IT files made available by Bpifrance Financements pursuant to an agreement entered into with the lending institution); and

³ Namely safeguard, judicial rehabilitation or liquidation under Book VI of the French *code de commerce*.

- with respect to loans extended to all other businesses, the granting of the guarantee is subject to prior approval by way of an order of the Economy and Finance.

Pursuant to LFR 2020, Bpifrance Financement is commissioned by the French state with the servicing the guarantee on its behalf, which includes:

- monitoring the guaranteed outstanding amounts;
- collecting the guarantee fees from the lending institutions; and
- verifying the conditions under which the guarantee is called by the lending institutions, and notably that the Terms and Conditions are complied with; and
- making payments under the guarantee on behalf of the French State.

Following such payments, Bpifrance Financement is repaid by the French State pursuant to an agreement to be entered into with the French State.

The conditions under which the servicing of the guarantee will be performed by Bpifrance Financement and the State's oversight will be exercised will be specified in a forthcoming decree.

STATE AID CLEARANCE

The French State notified the measures taken under the emergency bill to the European Commission and received state aid clearance on 19 March (within 48 hours from the notification). The clearance comes just after the Commission adopted a temporary framework setting out the conditions for clearing EU government's state aid measures to support businesses affected by the COVID-19 outbreak. [**Reference to EU State Aid Client Briefing**]. The Commission confirmed in the Decision that the bank guarantees granted under the French aid package complied with the Commission's new framework, in particular regarding (i) the amount of the bank guarantee remuneration, (ii) the limitation in time (guarantees will be granted prior to 31 December 2020), (iii) guarantees can't exceed certain thresholds (depending on the size of the individual company), (iv) the duration of the guarantee which is limited to six years and (v) exclusion of companies that were already in financial difficulties prior to the COVID-19 outbreak. On this basis the Commission considered the measures as necessary, adequate and proportionate.

QUESTIONS

The French State Aid Decision and LFR Regime are silent concerning certain questions which may be of interest, notably for the lending institutions among other things:

- is the State guarantee transferable in the event the guaranteed exposure is sold by the lending institution to third party (as the LFR Regime does not seem to prohibit them from doing so)?
- can the State guarantee be treated as a risk mitigating technique under Regulation (EU) No. 573/2013 ("**CRR**")?

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