

EC state aid approach to Covid-19 reflects lessons learned from financial crisis

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Antitrust and Competition practice group leader Jacques Derenne spoke with *PaRR* about the EU State aid control's response to COVID-19. "The challenge to DG Competition and EU state aid policy is nothing new, said Jacques Derenne, partner at Sheppard Mullin.

In terms of addressing exemptions to state aid "to make good the damage caused by natural disasters or exceptional occurrences", under Article 107(2)(b) TFEU, the EC can look back to the decisions concerning the aviation sector following 2010 Icelandic Volcanic eruption and the insurance sector following the attacks of 11 September 2001 as precedents, said Derenne. "Everything we're doing now, we've done before, only the factual circumstances change," he said.

Derenne noted that the EC's decision processes and remit for using the power is clear. The EC only needs to verify that the event in question is an exceptional occurrence, and then it will clear measures without discretionary compatibility assessment, said Derenne, unlike for the next type of exemption.

As for the EC's powers to allow for exemptions of aid "to remedy a serious disturbance in the economy of a Member State", Derenne noted that a decisive shift in the EC's approach came with the 2008 financial crisis. Prior to 2008, the EC had only made use of this exemption under Article 107(3)(b) TFEU three times – in 1974, 1987 and 1991 – to account for the oil crisis and two difficult economic crises in Greece, and together these only gave rise to one formal decision. Since 2008, the EC has issued more than 400 decisions making use of that exemption. This appears to be the main legal basis for the EC to approve urgent Covid-19 related aid, Derenne added.

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