

FEDERAL MEASURES IN AUSTRIA
TO MAINTAIN BUSINESS SOLVENCY
DURING THE COVID-19 CRISIS

(AS OF 27 MARCH 2020)

1. General¹

Over the past few days, the Austrian Federal Government has adopted more measures to maintain the solvency of companies in the crisis triggered by COVID-19. We have summarized the most important measures in the following overview. The constantly evolving situation prevents this from being comprehensive, and we recommend reaching out to legal counsel with any concrete questions.

2. Crisis Management Fund and Hardship Fund

2.1 COVID-19 Crisis Management Fund

The COVID-19 Fund Act established the "COVID-19 Crisis Management Fund" at the Federal Minister of Finance (**BMF**). This fund will distribute money to federal ministries in order to efficiently and flexibly finance measures to deal with the COVID-19 crisis in Austria.² The fund is endowed with **up to EUR 4 billion**.³ Some examples of potential fund purposes include:

- stimulating the labor market (especially short-time work under Section 13 (1) of the Labor Market Financing Act);
- cushioning crisis-related loss of income;
- stimulating the economy.

So far, the fund has been used primarily for short-time work and tax relief for affected businesses.⁴ The BMF is responsible for administering the fund based on government guidelines,⁵ which are not yet publicly available.

2.2 Hardship Fund

A maximum of **EUR 1 billion** from the COVID-19 Crisis Management Fund will be made available for a Hardship Fund.⁶ This fund is intended to create a safety net for hardship experienced by one-person enterprises, freelancers, non-profit organizations, and micro-enterprises. These grants will be administered by the Austrian Federal Economic Chamber,⁷ using guidelines which are still forthcoming.

¹ All resources cited in this memo are in German. Please contact legal counsel with any specific questions.

² Vgl. § 1 Bundesgesetz über die Errichtung des COVID-19-Krisenbewältigungsfonds (**COVID-19-FondsG**)

³ Vgl. § 2 COVID-19 FondsG.

⁴ Information in German available [here](#) and [here](#).

⁵ § 3 Abs 2 COVID-19-FondsG.

⁶ Vgl. § 1 Abs 3 Bundesgesetz über die Errichtung eines Härtefallfonds (**Härtefallfondsgesetz**).

⁷ Vgl. § 1 Abs 2 Härtefallfondsgesetz.

3. Financial support from ABBAG for companies with liquidity problems

In order to provide financial support for companies, the legislature has also changed the corporate purpose of the Federal Liquidity Management Company (*ABBAG*). ABBAG can now assist Austrian companies that have temporarily run into liquidity problems and require financial support related to the SARS-CoV2 pathogen.⁸ These measures are intended to maintain solvency and bridge liquidity problems. They include granting bridge loans and financing working capital to cover current unavoidable costs during the period of limited business activity.

Assistance is available only for companies that have their registered office or permanent establishment in Austria, and conduct their main operational activities in Austria.⁹ There is no legal entitlement to the funds.¹⁰

ABBAG is to be funded by the legislature so that it can take appropriate financial measures. At present, it is not clear whether this funding will come from the COVID-19 Crisis Management Fund. The BMF must issue guidelines by ordinance, taking the requirements of EU subsidy law into account. These guidelines must regulate who is eligible for benefits, the structure and purpose of the financial resources, and the amount and duration of the financial measures.¹¹ The guidelines are not yet available.

4. Other support

The Austrian Federal Government plans to make **up to EUR 38 billion** available to companies, including

- **EUR 4 billion** for the COVID-19 Crisis Management Fund,
- **EUR 9 billion** for guarantees and commitments to secure loans,
- **EUR 15 billion** in emergency aid for sectors that are particularly hard hit, and
- **EUR 10 billion** for tax deferrals.¹²

There are not yet any statutory regulations on this. It can be assumed that the COVID-19 Crisis Management Fund will be increased, and that subsequent guidelines on use will be issued.

5. EU State Aid

Since the proposed government measures subsidize specific companies, or the production of specific goods, they must be qualified as State Aid under EU law.¹³ They must be approved by the European Commission before they can be paid out.¹⁴ In principle, each measure must be examined to determine whether the aid is compatible with EU law. Given the COVID-19 crisis, they may determine compatibility because the aid is granted to

- (i) repair damage caused by natural disasters or exceptional occurrences¹⁵, or
- (ii) remedy a serious disturbance in the economy of a Member State.¹⁶

⁸ § 2 Abs 1 Z 3 ABBAG-Gesetz.

⁹ § 3b Abs 1 ABBAG-Gesetz.

¹⁰ § 3b Abs 2 ABBAG-Gesetz.

¹¹ § 3b Abs 3 ABBAG-Gesetz.

¹² <https://www.bundestkanzleramt.gv.at/bundestkanzleramt/nachrichten-der-bundesregierung/2020/hilfspaket-von-bis-zu-38-milliarden-euro-zur-bewaeltigung-der-coronavirus-Folgen.html>

¹³ Art 107 Abs 1 AEUV.

¹⁴ Art 108 Abs 3 AEUV.

¹⁵ Art 107 Abs 2 lit b AEUV.

¹⁶ Art 107 Abs 3 lit b AEUV

The European Commission has recently clarified that the following measures to remedy serious disturbances in the economy are justified by COVID-19:¹⁷

- direct grants, repayable advances, and tax benefits of up to EUR 800,000 to cover urgent liquidity needs;
- guarantees for loans with a limited term and amount;
- interest subsidies for a limited period of time, and for limited loan amounts;
- export credit insurance.

Only companies which did not experience difficulties until after 31 December 2019 are eligible for these measures.

Since the European Commission is likely to approve these types of measures more quickly, the BMF, ABBAG, and other authorities in Austria will probably focus on them first.

Vienna, 27 March 2020

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¹⁷ Mitteilung der Kommission – Befristeter Rahmen für staatliche Beihilfen zur Stützung der Wirtschaft angesichts des derzeitigen Ausbruchs von COVID-19 https://ec.europa.eu/competition/state_aid/what_is_new/sa_covid19_temporary-framework_de.pdf