Covid-19 Special Alerts | 04 June 2020

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1. EUROPEAN COMMISSION APPROVES BELGIAN REGIONAL SCHEME TO SUPPORT RESEARCH AND DEVELOPMENT PROJECTS IN RELATION TO COVID-19

On 12 May 2020, the European Commission (***Commission***) approved a Belgian scheme under the State aid Temporary Framework (***the Framework***) of up to EUR 25 million to support companies active in research and development activities in Wallonia. The measure will provide aid in the form of direct grants and repayable advances. It intends to encourage the development of solutions to respond to the fight of COVID-19 (*e.g.,* diagnostic solutions, treatments and vaccines).

To be eligible for the aid, companies must show that:

- They perform research and development activities mainly in Wallonia;
- They carry out COVID-19 related research and development projects; and
- They do not qualify as undertakings in difficulty within the meaning of the General Block Exemption Regulation (***GBER***)

The Commission considered that the scheme was in line with the conditions set out by the Framework namely as (i) the aid will not be granted after 31 December 2020, (ii) the aid will cover 80% of the eligible costs of the project for SME's and 60% of these costs for large undertakings and (iii) the beneficiaries of the aid must commit to make the outcome of their research available to third parties within the EEA through non-exclusive licenses.

Please find a link to the Commission's press release here.

2. EUROPEAN COMMISSION APPROVES BELGIAN SCHEME SUPPORTING INTERNATIONALLY ACTIVE COMPANIES IN THE CONTEXT OF COVID-19

On 15 May 2020, the European Commission (***Commission***) approved a Belgian guarantee scheme under the State aid Temporary Framework (***the Framework***) of up to EUR 500 million to support companies that carry out international operations and are affected by the coronavirus outbreak. The measure will take the form of guarantees on capital loans and investment loans and will be implemented by the Belgian export credit agency, Credendo, which acts on behalf of the State.

To be eligible for the aid, companies must show that:

- Their exports amount to 30% of their annual turnover;
- They do not qualify as undertakings in difficulty within the meaning of the General Block Exemption Regulation (***GBER***), the Agriculture Block Exemption Regulation and the Fisheries Block Exemption Regulation;
- They were not in default of payments of loans, taxes or social security contributions as of 1 February 2020 (or in default of these payments for more than 30 days as at 29 February 2020); and
- They are not subject to a loan restructuring process by their bank.

The Commission considered that the scheme was in line with the conditions set out by the Framework namely as (i) the guarantees will not be granted after 30 September 2020, (ii) the aid will be granted for a maximum period of one year and (iii) the scheme provides for adequate safeguards to ensure that the aid does not indirectly favour credit institutions or other financial institutions.

Please find a link to the Commission's decision here.

3. EUROPEAN COMMISSION APPROVES BELGIAN REINSURANCE SCHEME TO SUPPORT TRADE CREDIT INSURANCE MARKET

On 18 May 2020, the European Commission (***Commission***) approved a Belgian reinsurance scheme under the State aid Temporary Framework (***the Framework***) of up to EUR 903 million to support the trade credit insurance market in the context of the coronavirus outbreak. Given the economic impact of the coronavirus outbreak, the risk of insurers not being willing to maintain their insurance coverage has become higher. This reinsurance scheme will ensure that trade credit insurance continues to be available to all companies, avoiding the need for buyers of goods or services to pay in advance and therefore, reducing their immediate liquidity needs.

The Commission found that the scheme is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and the general principles set out in the Framework. Furthermore, the European Commission has found the scheme is in line with the short-term export credit communication.

Please find a link to the Commission's announcement here.

4. EUROPEAN COMMISSION APPROVES EUR 71 MILLION AID TO AUTOMOTIVE COMPONENT MANUFACTURER NOVARES IN THE CONTEXT OF THE COVID-19 CRISIS

On 27 May 2020, the European Commission (***Commission***) announced that it had approved a EUR 71 million French aid in the form of an individual state guarantee for automotive component manufacturer, Novares. The French State will guarantee 90% of the loan.

The French aid was approved under the State aid Temporary Framework adopted by the Commission on 19 March 2020, as amended on 3 April and 8 May 2020.

The Commission concluded that the measure was necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State, in line with Article 107(3)(b) TFEU and the Temporary Framework. On this basis, the Commission approved the measure under EU State aid rules.

5. AMBITIOUS FRANCO-GERMAN PROPOSAL FOR EU COVID-19 REVOVERY PLAN

On 18 May 2020, French President Macron and German Chancellor Merkel announced their joint Initiative for the European Recovery from the Coronavirus Crisis via videoconference. The proposal sets out four categories of measures.

First, it proposes a European Health Strategy to develop the EU's strategic health sovereignty, reduce EU dependency in the healthcare sector and increase capacities on research and development in relation to COVID-19 but also more generally. It further calls for the EU to establish a common strategic stock of medicines and medical products, coordinated procurement policies and common standards for health data interoperability.

The second proposed measure is a Recovery Fund of EUR 500 billion, integrated into the next EU budget and financed by permitting the European Commission to borrow on behalf of the European Union. The aim is to enhance the EU's competitiveness and increase investment, in particular, in the digital and green transition. It also calls for fair taxation, however, including taxation of the digital economy.

The third measure seeks to speed up the green and digital transitions through more ambitious emissions reduction targets, consideration of the carbon border adjustment mechanism and green conditionality for state aid. Germany and France support minimum carbon pricing and a cross-sectoral Emissions Trading System, the creation of a sector-specific green recovery roadmap as well as rolling out 5G and an enabling framework for artificial intelligence and regulation for digital platforms.

Finally, the proposal calls for enhanced economic and industrial resilience and sovereignty by strengthening the EU single market. This entails the diversification of supply chains through a free trade agenda and greater integration in the digital, energy and capital markets. The proposal calls for adjustments to the EU's industrial strategy with specific reference to "modernising European competition policy", including state aid.

The proposal has been welcomed by some, however, the group comprised of Austria, Denmark, the Netherlands and Sweden, nicknamed the "frugal four", signalled their opposition and presented their own non-paper for an efficient and sustainable COVID-19 recovery.

Please find a link to the German Government's press release here and the Austrian non-paper here.

6. GERMANY AMENDS FDI RULES WITH FOCUS ON HEALTHCARE SECTOR

On 20 May 2020, the German Federal Cabinet adopted an amendment to the Foreign Trade and Payments Ordinance (Außenwirtschaftsverordnung – ***AWV***) with a particular focus on the healthcare sector. Although adopted against the background of COVID-19, it is not restricted with respect to time. It is intended to contribute to the long-term maintenance of a functioning healthcare system in the Federal Republic of Germany and also in case of future comparable crisis situations.

The amendment brings forward measures which were previously planned as part of a more comprehensive AWV amendment in an effort to ensure a continuous supply of essential products during the coronavirus crisis.

The current rules provide for an obligation to notify foreign investments to the Federal Ministry Economic Affairs and Energy under Germany's cross sector screening mechanism should the target company operate in a critical infrastructure. Under the new rule, the obligation to notify will be expanded to include additional sectors. Among those additional sectors, the following relate to the health sector:

- development, production or marketing of pharmaceuticals essential to ensure the provision of health care to the population, such as vaccines and antibiotics;
- development or production of medical devices for the diagnosis, prevention, monitoring, prediction, prognosis, treatment or relief of life-threatening and highly contagious infectious diseases, such as ventilators;
- development or production of personal protective equipment; and

- development or production of in vitro diagnostics which provide information on physiological or pathological processes or conditions or indicate or monitor therapeutic measures in connection with life-threatening and highly contagious infectious diseases.

In future, the Government will be allowed to examine the security implications of share acquisitions by a foreign investor into the above sectors starting from a threshold of 10% of the healthcare company's shares. Previously, a threshold of 25% was applicable.

In parallel, Germany is also amending the Foreign Trade and Payments Act (Außenwirtschaftsgesetz – ***AWG***) which tightens the standard of review for prohibitions. Where previously a "present threat" to public order or security was required for a prohibition, under the new rules a "probable impairment" of public order or security will be sufficient.

7. ITALY BRINGS IN ADDITIONAL MEASURES TO SUPPORT COMPANIES AFFECTED BY THE COVID-19 OUTBREAK

On 19 May 2020, the Italian Government adopted Decree Law No. 34, so-called "*Decreto Rilancio*".[1] That Decree Law provides additional aid measures to support companies affected by the negative economic consequences of the COVID-19 outbreak.

The Decree Law introduces, *inter alia*, concrete and immediate measures to support businesses and other economic operators with a VAT number, including craftsmen, self-employed workers and professionals affected by the health emergency. In particular, the Decree Law:

a) provides that Regions, Autonomous Provinces, other Territorial Authorities and Chambers of Commerce may adopt different direct aid measures from their own resources up to an amount of EUR 800,000 per enterprise.[2] This aid scheme has been called "*Regime Quadro*" and it has been authorized by the European Commission's decision of 21 May 2020 under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak .[3] This aid scheme is addressed to all undertakings registered in Italy who were not already in difficulty within the meaning of the General Block Exemption Regulation ("GBER")[4] on 31 December 2019, regardless of the size and sector and where they operate . Specifically, the aid under this scheme is granted in the form of:

   - direct grants, tax and payment advantages or other forms such as repayable advances, guarantees, loans and equity;

   - guarantees on loans granted directly or channelled through credit institutions and other financial institutions such as financial intermediaries that are allowed to provide credit in Italy;

1 Decree Law of 19 May 2020 No. 34 is available at this link.
2 Decree Law of 19 May 2020 No.34, Articles 54-61.
3 Commission's decision of 21 May 2020 is available at this link.
4 Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty.

- subsidised interest rates on loans granted directly or channelled through credit institutions and other financial institutions such as financial intermediaries that are allowed to provide credit in Italy;
- direct grants, repayable advances or tax advantages for COVID-19 relevant research and development;
- investment aid for testing and upscaling infrastructures that contribute to the development of COVID-19 relevant products;
- investment aid for the production of COVID-19 relevant products; and
- wage subsidies for employees to avoid lay-offs during the COVID-19 outbreak.

b) provides for a non-repayable grant to persons engaged in business activities and self-employed persons who are VAT registered, including undertakings engaged in agricultural or commercial activities with a turnover of less than EUR 5 million in the last tax period. The contribution is granted if the amount of the turnover for the month of April 2020, was less than two thirds of the amount of the turnover for the month of April 2019. The amount of the grant is determined in percentage with respect to the aforementioned difference found. The grant will not form part of the tax base for the income tax;[5]

c) authorises Cassa Depositi e Prestiti S.p.A. ("CDP") to set up an allocated asset (*Patrimonio destinato*), called "Patrimonio Rilancio", whose resources will be used to support and re-launch the Italian productive economic system, in compliance with the European Union's regulatory framework on State aid adopted to deal with the COVID-19 outbreak or at market conditions. The allocated assets will be endowed with goods and legal relations by the Italian Ministry of Economy and Finance. The interventions will concern joint stock companies, including those with shares listed on regulated markets and those set up as cooperatives, which have their registered office in Italy; do not operate in the banking, financial or insurance sector and have an annual turnover of more than EUR 50 million. The access requirements will be defined by a subsequent Presidential Decree, upon proposal of the Minister of Economy and Finance, after consultation with the Minister of Economic Development. CDP may use the assets to make any form of investment (of a temporary nature), including the granting of loans and guarantees, the subscription of financial instruments and the acquisition of equity interests on the primary and secondary markets;[6]

d) authorises the establishment of the *"Fondo Patrimonio PMI",* whose management will be entrusted to the National Agency for the Attraction of Investments and Enterprise Development Spa ("Invitalia"). The purpose of the fund will be the underwriting, by 31 December 2020, of participative financial instruments issued by the companies already mentioned in the previous point;[7]

e) provides for the increase in the allocations of (i) the fund to cover the guarantees granted to small and medium enterprises, (ii) the fund of ISMEA (Institute of services for the agricultural food market) for

[5] Decree Law of 19 May 2020 No. 34, Article 25.
[6] Decree Law of 19 May 2020 No. 34, Article 27.
[7] Decree Law of 19 May 2020 No. 34, Article 26.

guarantees to SMEs operating in the agro-food sector, (iii) the integrated promotion fund set up by the so-called "Cura Italia" Decree Law,[8] (iv) the fund for the internationalisation of SMEs, with the further establishment of a Guarantee Fund aimed at relieving SMEs that draw on credits for internationalization from the costs and administrative burdens deriving from the need to provide bank and insurance guarantees for part of the credits obtained;[9]

f) provides for the setting up of a "Technology Transfer Fund" within the Ministry of Economic Development, aimed at promoting initiatives and investments linked with the research results made by companies operating on national territory, with particular reference to innovative start-ups.[10]

8. EUROPEAN COMMISSION APPROVES LUXEMBOURG'S EUR 30 MILLION STATE AID SCHEME TO SUPPORT INVESTMENT

On 20 May 2020, the European Commission ("*Commission*") approved Luxembourg's direct grant scheme under the Temporary Framework for State aid measures initially adopted on 19 March 2020.

In order to combat the lack of investment in the real economy due to the insufficient liquidity of businesses of all sizes, the Government of Luxembourg proposed to set up a direct grant scheme amounting to EUR 30 million. The aid can be granted until 31 December 2020, and will be open to businesses of any size which have suffered a loss of turnover of at least 15% in April and May 2020, as a result of the COVID-19 outbreak. Financial institutions, agricultural and fisheries businesses are, however, excluded.

The grants which are limited to EUR 800,000 per undertaking, can be granted in three areas:

- Investment aid for development projects such as extensions of an establishment, diversification of output or fundamental changes in the production processes (notably intensities may be increased by 20% if the investment supports the circular economy);
- Investment aid for process and organisational innovation projects;
- Investment aid for energy efficiency projects or projects to go beyond environmental standards.

The Commission found that the aid scheme is liable to distort competition but is justified under Article 107(3)(b) TFEU in line with the clarifications set out in the Temporary Framework.

Please find a link to the text of the Commission's decision here.

9. EUROPEAN COMMISSION APPROVES EUR 100 MILLION SUPPORT SCHEME TO DUTCH SMES

On 24 April 2020, the European Commission (***Commission***) approved a EUR 100 million Dutch scheme to support small and medium-sized companies (***SMEs***) affected by the COVID-19 crisis. The measure will

[8] Decree Law of 17 March 2020 No 18, available at this link.
[9] Decree Law of 19 May 2020 No. 34, Article 31.
[10] Decree Law of 19 May 2020 No. 34, Article 42.

take the form of subsidized interest rates on loans and will be available to SMEs whose main source of financing comes from microcredit, venture capital or external equity.

The Commission considered that the measure was in line with the conditions set out in the State Aid Temporary Framework as (i) the loan amount per company is limited to the liquidity needs for the foreseeable future; (ii) the loans will only be granted until the end of this year; (iii) the loans are limited to a maximum time period of six years; and (iv) the interest rates are in line with the levels set out in the State Aid Temporary Framework. On this basis, the Commission approved the measure under EU State aid rules.

Please find a link to the Commission's press release here and a link to the public version of the decision here.

10. EUROPEAN COMMISSION APPROVES DUTCH GUARANTEE SCHEME IN SUPPORT OF TRADE CREDIT INSURANCES

On 25 May 2020, the European Commission (***Commission***) approved a Dutch guarantee scheme to support the trade credit insurance market in respect of the COVID-19 crisis. The Dutch scheme is open to all credit insurers in the Netherlands and will ensure that all companies continue to have access to trade credit insurance. The guarantee scheme will ensure risk-sharing between the insurers and the Dutch State up to a volume of EUR 1 billion and provides for a supplementary safety-net to cover up to EUR 12 billion in total if needed.

The Commission approved the measure as it was necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and therefore in line with the general principles set out in the State Aid Temporary Framework and Article 107(3)(b) TFEU.

Please find a link to the Commission's press release here.

11. UK CMA PUBLISHES UPDATE ON THE WORK OF ITS COVID-19 TASKFORCE

The UK's CMA published an update on the work of its COVID-19 Taskforce, a unit put together to handle competition and consumer concerns arising from the pandemic.

The report notes that the majority of businesses have behaved responsibly during the pandemic, with complaints having been made against less than 1 out of 1,000 UK private sector businesses. Of the submissions received by the Taskforce, complainants' main grievances have related to the charging of excessive prices, misleading claims about goods or services, and the failure to respect customers' rights to cancellations and refunds.

A summary of a number of key points from the update are outlined below:

- In the early stages of the Taskforce's mandate, the largest proportion of complaints related to excessive pricing. Whilst the number of excessive pricing complaints has since declined, there has been a significant increase in complaints regarding failure to respect cancellation and refund rights. With respect to the latter, the CMA has opened cases against companies operating in a number of sectors where such practices appear to be particularly prominent, including holiday accommodation; weddings and private events; and nursery and childcare providers.

- Regarding complaints related to excessive prices, the most complained about product is meat, followed by hand sanitiser, toilet paper and rice. Hand sanitiser has seen the most notable price increase, with a reported median rise just short of 400%.
- The CMA has written to 264 firms (accounting for over 3,100 complaints) regarding price rises for essential products. Of the responses it has received, many businesses attribute their price increases to higher costs imposed on them by entities operating further up the supply chain. The Taskforce is gathering further evidence relating to such supplier pricing practices.
- Many complaints about unjustifiable price rises relate to listings placed on online platforms. The CMA has drawn complaints about listings charging unjustifiable prices for essential goods to the attention of Amazon and eBay. It has stated that it expects retail platforms to take steps to prevent such listings; for them to be identified and removed when they do appear; and for the accounts of unscrupulous sellers to be blocked or terminated.