Antitrust ADVISORY ■

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EU State Aid Measures in the Fight Against COVID-19 Pandemic

European Commission

The president of the European Commission, Ursula von der Leyen, has announced that European companies hurt by the coronavirus (COVID-19) pandemic will be receiving aid from EU Member States under rules that allow the grant of aid under exceptional circumstances. Unlike in the U.S., where governmental subsidies to industries generally are not as common or the subject of antitrust analysis, the EU state aid regime regulates advantages, financial or otherwise, national public authorities have selectively conferred to companies that may distort competition in the single market. These government interventions are subject to approval by the European Commission and, under specific circumstances, may be approved conditionally or unconditionally. However, the European Commission has emphasised that all rescue aid given during this period must be proportionate and fairly distributed and only provided to support firms that would have been independently viable under normal circumstances.

The European Commission has already set out how a more flexible application of state aid rules and the European Fiscal Framework can assist in times of severe economic distress. Also, as a result of the coronavirus pandemic, the European Commission has announced that it will delay the review of its state aid rules, which was scheduled for later this year, and has been expected to tighten the criteria under which Member States could grant financial help.

In order to cope with the financial difficulties caused by COVID-19, Member States are using their national budgets and designing several temporary support measures addressed to companies and small and medium-sized enterprises (SMEs). These measures range from wage subsidies, suspension of payments of corporate and value-added taxes, or social contributions to direct financial support for consumers and employees. In addition, Member States are committing to help firms in need of urgent rescue aid, on the basis that any financial damage caused to these firms is due to exceptional circumstances outside their control.

The European Commission has already put a Temporary Framework into place that allows Member States to provide direct grants and tax advantages, state guarantees for loans, and subsidised interest rates for ailing but previously financially healthy firms. For aid in the form of a direct grant or tax advantage, Member States are able to set up measures allowing the payment of up to €800,000 per company. The Temporary

Framework will be in place until December 31, 2020. Subsidies are being granted to the transportation, aviation, tourism, banking, and retail sectors, and in general to any other business facing economic distress due to the COVID-19 pandemic.

Additionally, the European Commission has decided to temporarily amend the Short-term export-credit insurance Communication. Executive vice president Margrethe Vestager, in charge of competition policy, said that "With this amendment, companies affected by the coronavirus outbreak will be able to obtain short-term export-credit insurance from public insurers." According to the European Commission's press release, export credits enable foreign buyers of goods and/or services to defer payment. This implies credit risk for the seller/exporter, against which they insure themselves, typically with private insurers (so-called export credit insurance).

EU Member States

Denmark was the first Member State to announce the grant of €12 million to event organizers for canceled or postponed events due to the coronavirus pandemic. The European Commission has also already approved a €130 million Danish guarantee program for SMEs affected by the coronavirus pandemic, covering guarantees for operating loans with a limited maturity and size, and limiting the risk taken by the state to a maximum of 70 percent. Additionally, Denmark has set up a €1.3 billion plan, which will run until June 9, 2020 and will provide cover for up to 75 percent of the expected loss of revenue for the self-employed with a maximum compensation of €3,000 per month and per person. Another €130 million Danish liquidity guarantee plan has been approved, addressed to SMEs with export activities, in the form of state guarantees on loans and credits. Denmark also notified a €200 million loan facility in support of the Travel Guarantee Fund ("Rejsegarantifonden"), dedicated to the reimbursement of canceled package travel contracts due to the coronavirus pandemic.

Since the Temporary Framework has been put into place, the European Commission has approved a total of four state aid programs set up by **Germany**. In the first two of the German state aid programs, support may be granted by the German industrial bank KfW, as well as by other regional authorities and promotional banks. The first type of measure is a loan program covering up to 90 percent of the risk for loans for companies of all sizes, for up to €1 billion per company, depending on the company's liquidity needs. The second type of measure includes a program in which the KfW participates together with private banks to provide larger loans as a consortium. The third program is called "Bundesregelung Kleinbeihilfen 2020" and takes the form of direct grants, repayable advances, or tax and payment advantages of up to €120,000 per company active in the fisheries and aquaculture sector and up to €100,000 per company active in the primary production of agricultural products. The fourth program is complementary to the first two and is open to all companies. It enables the granting of guarantees on loans at favorable terms to help businesses cover immediate working capital and investment needs, in line with the conditions set in the Temporary Framework.

The European Commission has also approved aid packages granted by France, Portugal, and Italy. **France** initially took three measures that are expected to mobilize €300 billion of liquidity support for companies affected by the current emergency. Two of the measures enable the French public investment bank Bpifrance to provide state guarantees on commercial loans and credit lines for enterprises with up to 5,000 employees.

The third one provides state guarantees to banks on portfolios of new loans for all types of companies. On March 30, 2020, the French government notified an additional support measure with a total budget of €1.2 billion called “Fonds de solidarité” addressed to small and micro-enterprises (with a maximum of 10 employees and yearly revenue of up to €1 million) in the form of direct grants of up to €3,500 per company. Moreover, the French government decided to set up a deferral payment plan of certain aeronautical taxes that would in principle be due between March and December 2020 to after January 1, 2021 to compensate damages suffered by airlines due to the coronavirus pandemic. This aid measure is available to airlines with an operating licence in France, and airlines will be able to pay the taxes due over a period of up to 24 months.

Italy has put in place a €50 million aid program to support the production and supply of medical devices, such as ventilators and personal protection equipment, such as masks, goggles, gowns, and safety suits. Additionally, Italy has set up a guarantee plan to support a debt moratorium from banks to SMEs, including the postponement of repayments of overdraft facilities, bank advances, bullet loans, mortgages, and leasing operations.

The European Commission has also approved four **Portuguese** guarantee programs with a total budget of €3 billion for SMEs and midcaps affected by the coronavirus pandemic active in four different sectors: tourism, restaurants, manufacturing industry, and events organization.

Latvia’s €250 million subsidized loan and loan guarantee plans for companies affected by the coronavirus pandemic have also been approved under the Temporary Framework, together with a €300 million support measure in the form of a repayable advance of up to €500,000 per company granted in one or more installments by **Luxembourg** to support companies, including liberal professions, during the crisis.

Two guarantee programs with a total budget of approximately €20 billion have been set up by **Spain**, granting new loans and refinancing operations for self-employed workers and SMEs, as well as for larger companies. Spain has also notified an “umbrella scheme,” under which authorities at national, regional, and local levels will be able to grant liquidity support to companies affected by the coronavirus pandemic.

Estonia notified two state aid measures with a total budget of €1.75 billion in the form of either public guarantees on existing and new loans or the granting of loans on favorable terms. The first support measure will be implemented and administered by the public Foundation KredEx and the second measure by the public Estonian Rural Development Foundation.

The European Commission also approved a €200 million program in the form of repayable advances notified by **Ireland**, addressed to companies whose revenues have already been or are expected to be affected by the coronavirus pandemic. The program is available to companies that experience a decline of at least 15 percent in their revenue compared to the period before the pandemic and employ 10 or more full-time employees in certain manufacturing sectors and internationally traded sectors.

On April 2, 2020, the European Commission approved two guarantee programs on new loans granted by commercial banks to support SMEs set up by **Sweden** (with a total budget of €9.1 billion) and **Malta** (with a total budget of €350 million).

Additionally, the European Commission approved a €2 billion **Greek** guarantee measure implemented through the issuance of guarantees by the Hellenic Development Bank to financial intermediaries, which will grant working capital loans to Greek companies affected by the coronavirus pandemic.

EEA Member States

The EFTA Surveillance Authority (ESA) has approved two different guarantee plans proposed by **Norway** aimed at coping with liquidity issues faced by SMEs and airlines during the coronavirus pandemic. Under the first plan, the Norwegian authorities will provide public guarantees of up to €4.3 billion for investment and working capital loans granted to SMEs by credit institutions. The second plan is addressed to airline operators and sets up an aid instrument in the form of guarantees for new loans to all airlines for a limited period and limited loan amount.

On April 2, 2020, the ESA decided to permit reduced interest rates on loans from public lenders in Norway and **Iceland** by reducing the state aid base rates by almost a third under an exceptional circumstance provision due to the coronavirus pandemic. The rates will be updated again on May 1, 2020 to reflect the market situation at that point. This measure will allow public lenders to provide cheaper loans to businesses without approval by the ESA.

United Kingdom

The European Commission has also approved an aid program set up by the **United Kingdom** ("Coronavirus Business Interruption Loan Scheme" (CBILS)), which includes two separate support measures. The first measure will be implemented through the British Business Bank and consists of guarantees that cover 80 percent of loan facilities extended to SMEs with revenues of up to £45 million (approximately €49 million). The second measure, with a total budget of £600 million (approximately €654 million), includes direct grants to SMEs active in all market sectors that are facing temporary financial difficulties due to the coronavirus pandemic. The program will run until September 30, 2020, with a possibility of extension until December 31, 2020.

To view a list of the state aid measures approved by the European Commission in 2020, please see here.

To view a list of the state aid measures approved by the ESA in 2020, please see here.

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