COVID-19 KEY EU DEVELOPMENTS POLICY & REGULATORY UPDATE

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This regular alert covers key regulatory EU developments related to the COVID-19 situation. It does not purport to provide an exhaustive overview of developments and contains no analysis or opinion.

KEY DEVELOPMENTS

Competition & State Aid

- Delay of merger notifications
- State aid procedures fast-tracked
- Communication on Temporary State Aid Framework adopted

Foreign direct investment control

- Commission urges vigilance in Foreign Direct Investment
- EU issues guidelines on foreign investment screening

Trade / Export Controls

- Trade defence procedures adapted
- Guidelines on health-related border management measures
- Export authorization requirement for certain Personal Protective Equipment
- Brexit negotiations

Medicines, Medical Devices, and Personal Protective Equipment

- Commission ensuring adequate supply of protective equipment and medicines
- €80 million of financial support to CureVac.

Funding

- EIB mobilizes up to €40 billion of financing.

Other

- ‘Green lanes’ at EU border crossings.

COMPETITION & STATE AID

Mergers

Delay of Merger Notifications

DG COMP has put in place a number of measures to ensure business continuity in enforcing the EU Merger Regulation.

However, due to the complexities and disruptions caused by COVID-19, companies are encouraged to delay merger notifications until further notice, where possible.

Hand deliveries to DG COMP premises will remain possible but may become difficult due to reduced presence of staff.

However, DG Competition will temporarily also accept and actually encourages all submissions in digital format, either:

- electronically by email to the merger registry mailbox (comp-merger-registry@ec.europa.eu), putting the case team in copy if one has been assigned, or
- electronically through eTrustEx.

The delivery of paper originals will then be arranged at a later time. Further information on delivery of merger-related documents can be found here.

State Aid

State Aid Procedures fast-tracked (see here)

As per its Communication of 13 March 2020, the Commission has put in place procedural facilitations to enable a swift Commission approval process.

Decisions are taken within days of receiving a complete State aid notification from Member States, where necessary.

To further facilitate swift Member State action, the Commission stands ready to provide templates based on precedent decisions to grant aid to companies in line with existing EU State aid rules.

Communication on new State Aid Temporary Framework of 19 March 2020 (see here)

On 19 March 2020, the European Commission adopted a Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak.

These aid measures, likely to be of greatest relevance to SMEs, can be approved very rapidly upon notification to the Commission (21 aid schemes had already been green-lighted, as of 26 March, under the new Framework).

This Temporary Framework provides for **five types of aid**:

1. **Direct grants, tax advantages, and repayable advances**. Member States may establish schemes to grant up to €800,000 per company, where companies may be facing a sudden shortage or unavailability of liquidity. Aid shall be granted no later than 31 December 2020, except for tax advantages, where the aid is considered granted when the 2020 tax declaration is due.
2. **State guarantees for loans from banks,** to further facilitate access to liquidity to companies facing shortages. Allowing Member States to provide State guarantees will help to ensure that banks continue to provide loans to customers in need. Maximum loan amounts are foreseen, and the duration of the guarantee is limited to six years maximum. Guarantees must be granted by 31 December 2020.

3. **Subsidized public loans to companies**. Member States can grant loans with favorable interest rates to companies to assist in covering both immediate working capital and investment needs. As with the possibility to provide subsidized guarantees, certain limits apply to maximum loan amounts. Loan contracts shall be signed by 31 December 2020 and are limited to six years maximum.
4. **Public guarantees and loans, channeled through banks,** which will serve as a conduit for State aid to its customers. Such indirect aid to customers will allow Member States to capitalize on banks' existing lending capacities to bolster, in particular, SMEs. Such aid shall be viewed as direct aid to the banks' customers, not to the banks themselves. Banks shall be able to demonstrate that they operate a mechanism that ensures that advantages are passed on to the largest extent possible to the final beneficiaries via, e.g., higher volumes of financing or lower interest rates.
5. **Short-term export credit insurance** addresses the possible temporary unavailability in the private insurance market of cover for marketable risk with respect to certain countries. The aid would enable Member States to provide such short-term export credit insurance where needed.

The Temporary Framework will be in place until 31 December 2020 and applies retroactively to any aid granted by Member States since 1 February 2020.

Commission urges vigilance in FDI	The Commission has urged Member States to be vigilant and use all tools available at Union and national level to avoid a loss of critical assets and technology due to the current crisis. This includes tools such as national security screening and other security related instruments. The Commission will guide Member States, ahead of the application of the Foreign Direct Investment Screening Regulation.
New Commission Guidelines on Foreign Investment and Capital Movement from Third Countries (see here)	On 25 March 2020, the European Commission issued new Guidance to Member States addressing foreign direct investment and free movement of capital from third countries in the context of the COVID-19 crisis. The Guidance highlights that critical EU industries are subject to an increased risk of foreign takeover in the current crisis via foreign direct investment. This particularly affects, in particular, the healthcare sector and related industries, such as medical research establishments. To address these risks, the Guidance outlines how Member States can utilize existing EU rules, including the framework established under the EU FDI Regulation. As such, the Guidance: • calls upon Member States that already have FDI screening mechanisms in place to make full use of these mechanisms in accordance with the EU FDI Regulation. • calls upon those Member States currently without a screening mechanism, or whose screening mechanisms do not cover all relevant transactions, to set up a full-fledged screening mechanism and in the meantime to consider other options to address the aforementioned risks relating to foreign investments. • outlines the various grounds upon which Member States may adopt measures restricting the free movement of capital from third countries, including public health and other public policy purposes, such as protecting consumers and preserving financial stability.

TRADE / EXPORT CONTROL

Commission ensures continuation of trade defence procedures (see here)

The Commission on 13 March 2020 published adaptation measures for handling trade defence investigations to ensure that economic damages for European companies related to unfair trade remain adequately addressed during the COVID-19 outbreak.

These measures will facilitate the Commission's ability to timely and appropriately pursue its trade defence activity. In particular, the current exceptional circumstances prevent Commission staff from carrying out verification visits at the premises of companies concerned. To address these difficulties:

- For on-spot verification visits, the Commission has suspended all non-essential travel to affected areas and postponed all face-to-face meetings with visitors from these areas. Where information provided by exporting producers is not subject to on-spot verification because of travel restrictions or other safety measures, the Commission will rely to a stronger extent on the written submissions and endeavor to cross-check such information with other information available.
- For submission deadlines, the Commission may grant a 7-day extension to requesting exporting producers and other parties located in areas affected by COVID-19, who must explain in detail how the safety measures linked to COVID-19 affect their capacity to timely provide information. In extraordinary cases, involving regions particularly affected by the COVID-19 outbreak, the Commission may exceptionally decide to extend the deadline beyond the 7-day period.

As soon as the sanitary situation allows, the Commission will be ready to review on its own initiative any trade defence measures adopted on the basis of data that could not be fully verified due to the COVID-19 circumstances and to adjust these if appropriate.

COVID-19 Guidelines for border management measures (see here)

On 16 March 2020, the Commission published Guidelines for national border management measures, inter alia, to ensure the continued availability and supply of goods and essential services, especially food, medical and health supplies. In particular:

- Member States should preserve the free circulation of all goods. In particular, they should guarantee the supply chain of essential products such as medicines, medical equipment, essential and perishable food products and livestock. No restriction should be imposed on the circulation of such goods in the EU Single Market, unless duly justified.
- To speed up cross-border goods movement, Member States should designate priority green lanes for freight transport at their borders and consider waiving existing weekend bans.
- No additional certifications should be imposed on goods legally circulating within the Single Market.
- Where Member States impose restrictions on the transport of goods and passengers on the grounds of public health, this should be done only if those restrictions are transparent, science-based, proportionate, mode-specific and non-discriminatory. Any such border restriction should be notified to the Commission before implementation.

Export authorization

On 14 March 2020, the Commission introduced an export authorization requirement for certain PPE (Commission Implementing Regulation 2020/402),

requirement for certain Personal Protective Equipment (see here)

namely protective spectacles and visors, face shields, mouth-nose protection equipment, protective garments and gloves. Applicable for a period of six weeks, this measure applies to all exports outside the Union, irrespective of whether the product concerned originates in the Union or not. A related Commission Guidance Note can be accessed here.

Pursuant to this Regulation, exporters must apply for the export authorization with the competent authority in the Member State where they are established, which should consider a number of factors in deciding whether to grant the authorization, such as whether the export serves:

- to fulfil supply obligations under a joint procurement procedure in accordance with Article 5 of Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health;
- to support concerted support actions coordinated by the Integrated Political Crisis Response Mechanism (IPCR), the European Commission or other Union institutions;
- to respond to the requests of assistance addressed to the UPCM (Union Civil Protection Mechanism), by third countries or international organizations;
- to support the statutory activities of support companies abroad that enjoy protection under the Geneva Convention, and in so far as they do not impair the ability to work as a national support company;
- to support the activities of the World Health Organisation's (WHO) Global Outbreak Alert & Response Network (GOARN);
- to supply foreign operations of EU Member States including, military operations, international police missions and/or civilian international peacekeeping missions;
- for the supply of EU and Member State delegations abroad.

In a subsequent amendment (Commission Implementing Regulation 2020/426 of 19 March 2020) the Commission lifted the export authorization requirement for exports to Norway, Iceland, Liechtenstein, Switzerland, as well as the overseas countries and territories listed in Annex II of the Treaty and the Faeroe Islands, Andorra, San Marino and the Vatican City.

Brexit negotiations

The UK has not yet requested an extension of the negotiating period for Brexit, which is to run until 31 December 2020. PM Boris Johnson has reportedly dismissed calls to seek such an extension. If the two sides cannot reach a deal on the UK-EU future partnership by the end of this year, the UK would have to trade with the EU on WTO terms.

The second round of face-to-face negotiations has been postponed. Moreover, the two leading figures in the negotiations are now in isolation due to the virus (Michel Barnier and David Frost, the UK's chief negotiator).

All this raises doubts as to the feasibility of concluding the deal before the current deadline of 31 December. Officials are now seeking ways to conduct the negotiations through, for example, video conferencing, rather than face-to-face negotiations.

MEDICINES, MEDICAL DEVICES, AND PERSONAL PROTECTIVE EQUIPMENT

Commission ensuring adequate supply of

As per its Communication of 13 March 2020, the Commission has put in place measures to ensure security of supply across Europe of both medicines and protective equipment, such as protective glasses, facemasks, gloves, surgical overalls and gowns. These measures include:

protective equipment and medicines (see here)	• Together with Member States and the European Medicines Agency ("EMA"), the Commission will lead a new executive steering group to monitor potential shortages of medicines (both human and veterinary) due to COVID-19. The group will identify and coordinate EU-wide actions to protect patients when medicines in the EU are at risk of supply shortage. • The Commission is monitoring the situation through the Medical Devices Coordination Group (MDCG), including on the availability and performance of different diagnostic devices and cooperation regarding different national approaches on diagnostic tests. • Any planned national measure restricting access to medical and protective equipment must be communicated to the Commission, which is to inform the other Member States, to permit comments. To enable a coordinated response, the Commission is establishing a joint Task Force. • The European Commission also created a strategic rescEU stockpile of medical equipment such as ventilators and protective masks to help EU countries in the context of the COVID19 pandemic. rescEU is part of the EU Civil Protection Mechanism which strengthens cooperation between participating States in the field of civil protection, with a view to improving prevention, preparedness and response to disasters. Medical equipment in the stockpile will include items such as: intensive care equipment (e.g. ventilators), personal protective equipment (e.g. reusable masks), vaccines and therapeutics, and laboratory supplies. The stockpile will be hosted by one or several Member States. The hosting State will be responsible for procuring the equipment. Following this measure's entry into effect on 20 March 2020, the Member State wishing to host rescEU stockpiles can apply for a direct grant from the European Commission. The direct grant covers 90% of the costs of the stockpile while the remaining 10% are borne by the Member State. • In addition, the Commission has launched an accelerated joint procurement procedure via the Joint Procurement Agreement, under which 26 Member States are in the process of purchasing personal protective equipment, respiratory ventilators and items necessary for coronavirus testing. This coordinated approach gives Member States a strong position when negotiating with the industry on availability and price of medical products. • In parallel, the Commission is putting forward a Recommendation on the conformity assessment and market surveillance procedures within the context of COVID-19. This will enable, in particular, to increase the supply of certain types of personal protective equipment such as disposable facemasks to civil protection authorities, even if it is not CE-marked, without compromising health and safety standards. The Commission has also reached out to suppliers to assess shortages and asked them to immediately increase production.
Commission Guidelines on health-related border management	The Commission emphasized in its 16 March 2020 Guidelines that Member States should preserve the free circulation of all goods in the Single Market. In particular, they should guarantee the supply chain of essential products such as

measures in the context of COVID-19 (see here)	medicines, medical equipment, essential and perishable food products and livestock.
€80 million of financial support to CureVac (see here)	Through the Horizon 2020 programme, the European Commission has mobilized new funds for research through two special calls for research projects. On 16 March 2020, the Commission offered up to €80 million of financial support to CureVac, a vaccine developer from Tübingen, Germany, to scale up development and production of a vaccine against the Coronavirus in Europe. The support would come in form of an EU guarantee of a currently assessed EIB loan of an identical amount, in the framework of the InnovFin Infectious Disease Finance Facility under Horizon 2020.

FUNDING

EIB mobilizes up to €40 billion of financing (see here)	The EIB on 16 March 2020 proposed a plan to mobilize up to €40 billion of financing. This will go towards bridging loans, credit holidays, and other measures designed to alleviate liquidity and working capital constraints for SMEs and mid-caps. The EIB Group, including the European Investment Fund (EIF) which specializes in support for SMEs, will work through financial intermediaries in the Member States and in partnership with national promotional banks. The proposed financing package consists of: • Dedicated guarantee schemes to banks based on existing programmes for immediate deployment, mobilizing up to €20 billion of financing; • Dedicated liquidity lines to banks to ensure additional working capital support for SMEs and mid-caps of €10 billion • Dedicated asset-backed securities (ABS) purchasing programmes to allow banks to transfer risk on portfolios of SME loans, mobilizing another €10 billion of support.

OTHER

EU guidance to ensure continuous flow of goods across EU via 'green lanes' (see here)	On 23 March 2020, the Commission issued practical advice on how to implement its Guidelines for border management, to keep freight moving across EU borders during the current pandemic. Member States are requested to designate all relevant internal border-crossing points on the trans-European transport network (TEN-T) as 'green lane' border crossings. The green lane border crossings should be open to all freight vehicles, and border-crossings should not exceed 15 minutes.

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