



COVID-19 KEY EU DEVELOPMENTS POLICY & REGULATORY UPDATE

No. 53 | 28 June 2021

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.

LATEST KEY DEVELOPMENTS

Competition & State Aid

- European Commission conducts first dawn raid since COVID-19 crisis
- European Commission adopts positive assessments of Recovery and Resilience Plans from an additional 4 Member States
- European Commission approves new and amended Member State measures to support the economy

Trade / Export Controls

- European Commission extends steel safeguard measures for three years in light of COVID-19's economic consequences
- European Union proposes reform of World Customs Organization to improve responsiveness to global challenges
- European Union to promote health and safety at the workplace in future trade agreements

Medicines and Medical Devices

- European Commission President Ursula von der Leyen remarks on progress in EU vaccination levels

Cybersecurity, Privacy & Data Protection

- European Commission proposes Joint Cyber Unit to strengthen response to large-scale security incidents
- Joint Statement released on EU-US Justice and Home Affairs Ministerial Meeting

COMPETITION & STATE AID

Competition

European Commission conducts first dawn raid since COVID-19 crisis (see [here](#))

On 22 June 2021, the Commission announced an unannounced inspection in Germany at the premises of a company active in the garment manufacturing and distribution sector. This is the Commission's first "dawn raid" since the pandemic's outbreak and the suspension of on-site inspections.

The Commission stated its concerns regarding the inspected company's potential breach of EU antitrust rules that prohibit cartels and restrictive business practices (Article 101 TFEU). The Commission officials were accompanied by their counterparts from the German competition authority.

The Commission specified that the inspections were carried out in compliance with all coronavirus health and safety protocols to ensure the security of those involved.

Multiple national competition authorities in the EU have already recommenced inspection activity, or stated that they are about to do so. It is anticipated that a backlog of investigations may be waiting to be tackled through inspections.

State Aid

European Commission adopts positive assessments of Recovery and Resilience Plans from an additional 4 Member States (see [here](#))

As of 28 June 2021, the Commission had adopted 4 additional positive assessments of the Recovery and Resilience Plans of the below-listed Member States. These plans set out the reforms and public investment projects foreseen for implementation with the support of the Recovery and Resilience Facility (RRF):

- Belgium (€5.9 billion)
- France (€39.4 billion)
- Latvia (€1.8 billion)
- Slovakia (€6.3 billion)

These approvals are a key step towards disbursing funds to these Member States under the RRF, the key component of NextGenerationEU, the EU's plan for rebounding from the COVID-19 crisis. The RRF will provide up to €672.5 billion to finance reforms and investments (i.e., grants totaling €312.5 billion and €360 billion in loans).

The following 8 Member State plans have already received the Commission's approval: Austria (€3.5 billion); Denmark (€1.5 billion); Germany (€25.6 billion); Greece (€30.5 billion); Italy (€191.5 billion); Luxembourg (€93 million); Portugal (€16.6 billion); and Spain (€69.5 billion).

The Council will have, in principle, four weeks to adopt the Commission's proposals.

12 Member State plans remain pending approval (see [here](#)), with the following total amounts requested under the RRF: Croatia (€6.4 billion); Cyprus (€1.2 billion); Czechia (€7.1 billion); Estonia (€982.5 million); Finland (€2.1 billion); Hungary (€7.2 billion); Ireland (€1 billion); Lithuania (€2.2 billion); Poland (€23.9 billion); Romania (€29.3 billion); Slovenia (€2.5 billion);

and Sweden (€3.2 billion).

Commission assessment of plans. In evaluating the Member State plans under the criteria set out in the RRF Regulation, notably, the RRF guidelines make clear that the investment projects included in Member State recovery plans must comply with State aid rules.

The Commission published practical guidance for swift treatment of projects under State aid rules, as well as a number of sector-specific templates to help Member States design and prepare the State aid elements of their recovery plans (*Jones Day Commentary, "EU Member State COVID-19 Recovery Plans Must Comply with State Aid Rules," March 2021, see [here](#)*).

The Commission's appraisal of Member State plans will also, in particular, determine whether the plans dedicate at least 37% of expenditure to investments and reforms that pursue climate objectives and 20% to the digital transition.

In terms of timing, the RRF Regulation envisages two months for assessing the Recovery and Resilience plans and for translating their contents into legally binding acts. However, the Regulation also specifies that, if necessary, the Member State concerned and the Commission may agree to extend the deadline for assessment by a reasonable period.

Member State plans pending submission. The Commission will continue to closely engage with the 3 remaining Member States (i.e. Bulgaria, Malta, The Netherlands) to deliver robust national recovery plans. While Member States were invited to notify their plans before 30 April 2021, they may do so until mid-2022.

European Commission approves new and amended Member State measures to support the economy (see [here](#) and [here](#))

Since the onset of the coronavirus outbreak, the Commission has adopted a significant number of State aid measures under Article 107(2)b, Article 107(3)b and under the Temporary Framework.

The most recent measures adopted to support the economy and companies affected by coronavirus outbreak include:

- Modification to German scheme to support companies active in the maritime transport sector affected by the coronavirus outbreak, including a budget increase to approximately €70 million per year (previously €25 million per year).
- €24 million Danish scheme to support providers of public passenger transport by rail affected by the coronavirus outbreak.
- Modification to Dutch scheme to support companies affected by the coronavirus outbreak, including an overall budget increase of €3.5 billion.
- Modification to Polish scheme to further support companies affected by the coronavirus outbreak, including a budget increase to approximately €5.2 billion (previously €1.1 billion).
- €139.7 million Polish scheme to support bus companies affected by the coronavirus outbreak.
- €4.8 million Belgian aid measure to compensate Air Belgium SA for damages suffered due to the coronavirus outbreak.
- Modification to Slovak employment scheme to preserve jobs and support the self-employed affected by the coronavirus outbreak, including a budget increase from €2 billion to €3 billion.

TRADE / EXPORT CONTROLS

European Commission extends steel safeguard measures for three years in light of COVID-19's economic consequences (see [here](#))

On 24 June 2021, the Commission prolonged the EU's safeguard measures on imports of steel products by an additional three years*, adopting Implementing Regulation 2021/1029.

The safeguard measures, taken to prevent serious injury to the European steel industry caused by an increase in imports, were initially set to last three years until 30 June 2021.

This most recent Regulation reflects the Commission's view that the economic impact of the COVID-19 crisis "*amplified a pre-existing and continuing source of serious injury for the Union industry, which is mainly driven by imports.*" The Commission concluded that, due to the deterioration in the Union industry's situation during the pandemic, it was necessary to prolong the measures to allow the Union industry to adjust to continuing import pressures.

Therefore, the Commission extended the safeguard measures until 30 June 2024.

** The EU's steel safeguard measures impose tariff-rate quotas (TRQs), such that imports from third countries that exceed the Regulation's country-specific quota are subject to tariffs.*

European Union proposes reform of World Customs Organization to improve responsiveness to global challenges (see [here](#))

At a World Customs Organization (WCO) Council session (24-26 June 2021), the EU presented a proposal for reform of this global forum, which provides international standards and a basis for common action in the field of customs.

The EU proposal (see [here](#)) highlights, in particular, that the COVID-19 pandemic has increased the urgent need to reform the WCO, revealing that customs must be better prepared to swiftly adapt to new situations, e.g., facilitating cross-border movement of critical medicines and vaccines.

Accordingly, the EU proposes a three-step approach for the WCO's reform:

1. Greater focus and clarity on WCO's strategic priorities, such as the digitalization of customs processes; addressing the surging popularity of e-commerce, particularly during the COVID-19 pandemic; the contribution of customs to the green agenda; and simplifying customs clearance for businesses by developing coordinated border management.
2. Good governance methods in the WCO's management to ensure that the WCO can fulfill its role and deliver on the above goals. Its governance methods should be updated, including by improving its transparency and institutional and decision-making processes; reviewing the functioning and allocation of activities among the different WCO working bodies; and ensuring more efficient use of the WCO's resources.
3. A sustainable funding mechanism for the WCO, such that the WCO's means of funding should be reviewed to ensure its long-term sustainability and efficient use of resources, especially during the period of economic recovery following the COVID-19 pandemic.

European Union to promote health and safety at the workplace in future trade agreements (see [here](#))

On 28 June 2021, Executive Vice President and Trade Commissioner Valdis Dombrovskis delivered a statement focusing on the changing work world during the COVID-19 pandemic and the actions necessary to guarantee health and safety in the workplace.

In this context, Commissioner Dombrovskis emphasized the importance of updating the EU's own rules on occupational safety and health to reflect this changing environment, as well as to promote this issue globally.

He indicated that the EU's trading partner countries should be engaged, in particular, to incorporate the concept of "decent work" in future EU trade agreements, citing the recent example of the EU-Japan Economic Partnership Agreement (see [here](#)). In the Agreement (Chapter 16 on Trade and Sustainable Development), the parties recognize *inter alia*, "the importance of promoting the development of international trade in a way that is conducive to full and productive employment and decent work for all" and commit to cooperating on trade-related aspects of the International Labour Organisation's agenda for decent work.

MEDICINES AND MEDICAL DEVICES

European Commission President Ursula von der Leyen remarks on progress in EU vaccination levels (see [here](#))

On 25 June 2021, Commission President Ursula von der Leyen provided remarks following the close of the European Council meeting, emphasizing the EU's successes in tackling the pandemic.

While acknowledging the difficulties in launching the EU's vaccination campaign, President von der Leyen noted the significant progress made. This includes the delivery of over 424 million doses by end-June, which exceeds the EU's delivery targets for Q2 2021. She further reported that by end-June, nearly 60% of adults in the EU will have received at least one dose and almost 40% will be fully vaccinated.

With the onset of the Delta variant, which is increasingly present in the EU, President von der Leyen further urged continued vigilance, coordinated action, and the need to pursue vaccinations.

CYBERSECURITY, PRIVACY & DATA PROTECTION

European Commission proposes Joint Cyber Unit to strengthen response to large-scale security incidents ([here](#))

On 23 June 2021, the Commission announced the release of its Recommendation on Building a Joint Cyber Unit to step up response to large-scale security incidents (see [here](#)), as well as publication of its Communication on the Second Progress Report on the implementation of the EU Security Union Strategy ("Report", see [here](#)).

The aim of the proposed Joint Cyber Unit is to tackle the increasing number of cyber incidents impacting both the private and public sectors.

Implementation of the Joint Cyber Unit would build on the Report's findings, which include progress made by the EU and EU Member States in the context of the EU Security Union Strategy and the new EU Cybersecurity Strategy.

More specifically, the Report indicates progress in addressing so-called hybrid threats that comprise hostile actions, such as disinformation and

cyberattacks, which have increased significantly with the COVID-19 pandemic. The Commission has described hybrid threats as “*the mixture of conventional and unconventional, military and non-military, overt and covert actions that can be used in a coordinated manner by state or non-state actors to achieve specific objectives...*”.

In response to such hybrid threats, the EU has implemented actions to increase situational awareness, resilience in critical sectors, and ensure adequate response and recovery from hybrid threats.

The Joint Cyber Unit will be built through a structured and transparent process, in co-ownership with the Member States and stakeholders. It is expected to enter the operational phase by 30 June 2022 and reach full establishment by 30 June 2023.

Joint Statement released on EU-US Justice and Home Affairs Ministerial Meeting (see [here](#))

On 22 June 2021, the Council of the European Union published a Joint EU-US Statement following the EU-US Justice and Home Affairs Ministerial Meeting in Lisbon on the same day (“Joint Statement”).

The EU and the US viewed the meeting as an opportunity to reaffirm their commitment to cooperate and renew the transatlantic partnership in these challenging times. In particular, both sides agreed that cooperation on Justice and Home Affairs remains crucial, as the COVID-19 pandemic attenuates.

In the Joint Statement, the EU and the US acknowledged the importance of Passenger Name Record (“PNR”) data exchange, as a key instrument to combating terrorism and other serious crimes. Both sides recognized, however, that PNR data exchange should be undertaken in compliance with data protection requirements.

On cybersecurity, the EU and US indicated their alignment on the importance of combating ransomware attacks, including through law enforcement action and raising public awareness on protecting networks and the risk of paying criminals.

With respect to bilateral and multilateral instruments to tackle cybercrime, the EU and the US restated their commitment to negotiate, as soon as possible, an EU-US agreement facilitating access to e-evidence for the purpose of cooperation in criminal matters.

In addition, the EU and the US welcomed the recent approval of the draft text of the Second Additional Protocol of the Budapest Convention by the Committee of State Parties to such Convention, which is the primary instrument for international cooperation on cybercrime.

According to the Joint Statement, the EU and the US plan to meet again in the second half of 2021 in Washington, D.C.

LAWYER CONTACTS

Renato Antonini

Partner, Government Regulation;
Antitrust & Competition Law
Brussels

rantonini@jonesday.com

+32.2.645.14.19

Kaarli H. Eichhorn

Partner, Antitrust & Competition Law;
Government Regulation; Technology
Brussels

keichhorn@jonesday.com

+32.2.645.14.41

Dr. Jörg Hladjk

Partner, Cybersecurity, Privacy & Data
Protection; Government Regulation;
Technology

Brussels

jhladjk@jonesday.com

+32.2.645.15.30

Cristiana Spontoni

Partner, Health Care & Life Sciences;
Government Regulation

Brussels

cspontoni@jonesday.com

+32.2.645.14.48