COVID-19— Review of State-Sponsored Help for European Companies

Updated on 16 April 2020

As more and more countries go into lockdown, a significant proportion of commercial undertakings are either closed or struggling. The ways in which the pandemic affects businesses are too many to count but include a severe reduction in orders, disruption of their supply chain and loss of parts of their workforce.

There is no doubt that the impact on the European (and global) economy will be severe. Governments and institutions across Europe (including the European Commission and the European Central Bank as well as national and local governments) are scrambling to launch policies to blunt the impact of the economic shock.

The vast majority of these measures are open to any company with domestic employees, with relatively few restrictions based on the size or nationality of the ultimate beneficial owner. This means that help is on hand for multinational companies or PE-owned portfolio companies with operations in Europe. The measures are heterogeneous in nature, ranging from tax forbearance to State-subsidised temporary staff layoffs.

Furthermore, most major governments in Europe have been clear in their intention to use flexibility at the EU level to provide State aid to struggling enterprises. This is potentially very good news for larger undertakings facing difficulties—from airlines to industrial groups.

The procedures for applying for and receiving the different reliefs vary, and we can help guide you through them.

MEASURES IN THE MAIN EUROPEAN ECONOMIES

EU

The European institutions have launched a number of measures, which include:

- a €37bn investment package aimed at supporting Member States' responses to the pandemic, SMEs, healthcare operators and companies in the most affected sectors (including hospitality and tourism); this package will also be funded by relinquishing the Commission's obligation to request refunding of unspent pre-financing for European structural and investment funds currently held by Member States to quickly direct €25 billion to deal with the fallout of the crisis. Most of these funds will be deployed directly by the relevant Member States;

- sector-specific adjustments to EU policies and interpretation of EU laws, including a relaxation of the State aid rules and its slot regulation affecting airlines as well as additional support for agriculture and fishing; and

- a relaxation of prudential rules for the banking system aimed at increasing access to credit for firms in need.

As regards the State aid rules, the Commission has already turned words into actions. On 12 March 2020, the Commission approved a Danish State aid scheme within 24 hours of its adoption to compensate for damages caused by the COVID-19 outbreak. The Commission has since continued to approve State aid schemes notified to it in a swift and expedited manner, benefitting from its experience gained during the financial crisis in 2008 and moving faster than it did then as a result. The average length of time it takes for a State aid scheme to be approved is 24–48 hours. In the past weeks 18 of the 28 Member States have received approvals for State aid schemes. The Commission has also re-assigned additional staff to its State aid units to help during this initial crisis period.

On 19 March 2020, the Commission adopted on 19 March 2020 a "Temporary Framework" (the "Framework") for State aid that allows Member States to provide five types of aid to support the economy: (i) direct grants, selective tax advantages and advance payments (up to €800,000 per company), (ii) State guarantees for loans taken by companies, (iii) subsidised public loans to companies, (iv) safeguards for banks that channel State aid to the real economy and (v) flexibility to enable short-term export credit insurance. This was supplemented with an amendment to the Framework on 3 April 2020. The new amendment extends the Framework and allows Member States to give zero-interest loans and guarantees on loans that cover 100% of the risk or to

provide equity. Member States are permitted to provide such direct aid up to the nominal value of €800,000 per company.

The amendment also includes five additional types of aid measures: (i) targeted deferrals of tax or suspension of social security contributions, (ii) targeted support in the form of wage subsidies for employees, (iii) support for Covid-19 research and development, (iv) support for the construction and upscaling of testing facilities and (v) support for the production of products relevant to tackling the Covid-19 outbreak.

Within just a few weeks, the Commission has taken 47 State aid decisions approving over 50 national measures that provide liquidity to European businesses. The amended Framework will continue to apply to measures put in place between 1 February and 31 December 2020. On 9 April 2020, the Commission announced that it proposed to extend the Framework to provide recapitalisations to companies in need—as a last resort—in return for equity. The amended Framework is expected to be adopted this week. This is an important development, as it will allow national governments to buy stakes in companies in trouble (e.g., in the airline sector) as they did during the 2008 financial crisis. Italy has already indicated it will renationalise Alitalia, and Germany has said it may take a stake in Lufthansa. The important question is what conditions will be attached to such bailouts.

For the first time, the Commission has proposed a new instrument to mitigate unemployment risks and temporarily implemented the Support to Mitigate Unemployment Risks in an Emergency ("SURE"). SURE is a short-time work scheme designed to reduce the working hours of employees while at the same time providing them with income support for the hours not worked. SURE aims to avoid redundancies and ensure readiness of personnel once the economy is recovering from the pandemic. Under SURE, the Commission grants Member States €100 million in the form of loans on favorable terms so that they can create or extend their national short-time work schemes and implement similar measures for those who are self employed. To finance these loans, the Commission will borrow on financial markets, and the Member States will therefore benefit from the Commission's strong credit rating and low borrowing costs. SURE will start working once the Member States have provided guarantees of €25 million.

The new EU framework for the monitoring of foreign investment in the EU is due to come into force in October 2020, but the COVID-19 outbreak has forced the Commission to publish interim guidance encouraging Member States to either adopt or vigorously enforce screening mechanisms during this time to protect European companies from opportunistic acquirers. EU governments are also being urged to start "informal" cooperation with the Commission – before the bloc-wide monitoring system comes into force – in order to prevent predatory takeovers of key European companies

struggling during the pandemic. This proposal has found support from all Member State governments, with France, Germany, Italy and Spain in particular arguing for closer cooperation and information sharing between states.

UK

The UK government has announced an unprecedented package of measures, including:

- a scheme providing government grants to UK businesses to pay 80% of the wages of each of their employees who have been designated as furloughed employees, up to £2,500 a month per employee. This scheme will also be accessible by companies in administration (subject to certain conditions);
- a relaxation of annual leave rules, which will allow up to four weeks of unused statutory annual leave to be carried over for two years;
- a deferral of VAT payments by businesses for one quarter;
- increases to the universal credit standard allowance and extension of universal credit to the self employed;
- a deferral of individual self-assessment tax payments to January 2021 and the ability to apply to postpone filing annual audited accounts by three months;
- a waiver of business rates (i.e., taxes on occupancy of commercial properties) for one year for retail, hospitality and leisure businesses as well as cash grants administered by local authorities for the same types of businesses;
- a three-month temporary ban on landlords from evicting commercial tenants for unpaid rent from 23 March 2020. Commercial tenants will remain liable for rent due, and it is intended that a landlords' right to forfeiture will be reinstated at the end of the period;
- a business interruption loan scheme managed by the British Business Bank (a UK government-owned lender) allowing SMEs to borrow up to £5m with a government guarantee covering 80% of the loan and with a one-year interest-free period;
- a large business interruption loan scheme, which will be launched later in April, to provide government guarantees of 80% of the loan amount up to £25m to companies with a turnover of between £45m and £500m. The loans will only be provided to businesses that have been unable to secure regular commercial financing and will be offered at commercial rates of interest;
- a one-year government guarantee on all commercial paper issued by undertakings making a material contribution to the UK economy that had an investment grade rating prior to the crisis;

- measures aimed at increasing the provision of U.S.-dollar liquidity;
- additional flexibility to agree to additional time to settle outstanding tax bills;
- the ability for SMEs (up to 250 employees) to reclaim up to two weeks of statutory sick pay paid for coronavirus-related sick leave;
- a significant change to the UK insolvency framework, which is expected to provide a moratorium for embattled companies along with measures to permit these companies to carry on trading throughout the moratorium; and
- a temporary suspension of wrongful trading laws (which impose personal liability on directors found liable for a company's wrongful trading) to give company directors greater confidence in using their best endeavours to continue to trade during the pandemic.

The Bank of England (the "BoE") has also stepped in. It has promised increased support for banks lending to the "real economy" and is due to unveil new incentives for banks increasing their lending to SMEs. In particular, under the term funding scheme for SMEs ("TFSME"), the BoE is offering four-year collateralised loans to cover "at least 10% of … real economy lending at interest rates at, or very close to, Bank Rate" and "additional funding" to banks that increase lending to SMEs.

The BofE announced plans to inject a further £200 billion in to the UK economy by increasing their holdings in UK government bonds and sterling non-financial investment-grade corporate bonds. In a further measure aimed at stimulating the economy it has reduced the Bank Rate to an all time low of 0.1%.

In addition, the size of the "*Ways and Means*" banking facility of the UK government at the BoE has been increased. This will allow the UK government to finance itself through the BoE without recourse to the bond markets, as was the case during the 2008 financial crisis.

Note that any support granted by the UK government will need to comply with the EU State aid rules during the Brexit transition period.

Germany

The German government has also announced measures aimed at helping companies in financial difficulties due to the pandemic. These include:

- The ability to defer tax payments in order to support taxpayers' liquidity. Tax authorities are now able to defer taxes if their collection would lead to significant hardship for the taxpayer. The tax authorities are instructed not to impose strict conditions in this respect. In addition, it has been made easier to reduce quarterly tax pre-payments in 2020 once it becomes clear that a taxpayer's income in the current year is expected to be lower than in the previous year.

- Enforcement measures related to tax payments and late-payment penalties will be waived until 31 December 2020 if the debtor of a pending tax payment is directly affected by the coronavirus. This will apply to federal taxes such as corporate income tax, VAT, insurance tax and trade taxes as well as energy and aviation taxes. It does not directly apply to payroll taxes, withholding taxes or local taxes such as property taxes.

- The KfW, the German development bank, has launched a "Special Programme 2020", which was approved by the Commission under the Temporary Framework. The programme's funds are unlimited and available to SMEs as well as large enterprises. These companies can take out loans at a very low interest rate through their principal banks. Loans of up to €3 million will be assessed by KfW directly. Loans between €3 million and €10 million will benefit from a simplified risk assessment by the borrower's principle bank. In addition, the KfW assumes up to 80% or 90% of the risks. KfW loans are available only for such companies that were not already in financial difficulties on 31 December 2019. Special credit lines are available for start-up companies. Payments are expected to be made swiftly and unbureaucraticly. The German sporting goods manufacturer Adidas, for example, will receive a €3 billion revolving syndicated loan backed by the KfW as the group's business has collapsed as a consequence of the Corona crisis. The KfW is participating with €2.4 billion, therefore assuming 80% of the financing risk. The remaining €600 million will be granted by a consortium of the group's partner banks consisting of UniCredit, Bank of America, Citibank, Deutsche Bank, HSBC, Mizuho Bank and Standard Chartered Bank.

- In addition to the above, a KfW "instant loan" (*KfW-Schnellkredit*) is now available to medium-sized companies (i) with more than 10 employees and (ii) that have been active on the market since at least 1 January 2019. The maximum credit volume available per company is up to three monthly turnovers in 2019, which is further capped at a maximum of €500,000 for companies with up to 50 employees and a

maximum of €800,000 for companies with more than 50 employees. Eligible companies must not have been in financial difficulties as of 31 December 2019 and must have reported profits in 2019 or on average over the last three years.

- The German government also set up the Economic Stabilisation Fund (the "ESF"), which is an extensive rescue package providing additional support in particular for larger companies if such companies (i) have found no other alternative for funding to cope with the pandemic and (ii) have a clear continuity plan in place to overcome the challenges. Grants are approved by the Federal Ministry of Economics. Where necessary, the ESF may participate in the recapitalisation of companies by means of subordinated debt instruments, hybrid bonds, profit participation certificates, silent partnerships, convertible bonds or even corporate shares. The ESF has a volume of approximately €600 billion in total (€400 billion earmarked to provide loan guarantees to companies, €100 billion for investments and recapitalisation and up to €100 billion to refinance the KfW Special Programme 2020). Fund resources are available to larger companies in the "real economy" (*Realwirtschaft*), i.e., commercial enterprises that are neither companies in the financial sector nor credit institutions and which meet two of the following three criteria: (i) a balance sheet total of more than €43 million, (ii) turnover of more than €50 million and (iii) at least 250 employees per annum. Irrespective of these criteria, access to funds is also available for companies active in critical infrastructure sectors.

- Extended access to the *Kurzarbeit*, a State-subsidised scheme that allows companies to reduce the working hours of their employees without having to terminate their employment.

- Further, on 27 March 2020, the Federal Act to Mitigate the Consequences of the COVID-19 Pandemic in Civil, Insolvency and Criminal Proceedings (COVID-19 Mitigation Act—the "Mitigation Act") was passed by the German legislative bodies. The Mitigation Act contains a number of support measures for companies and citizens who are currently unable to meet payment obligations as a result of the COVID-19 pandemic, including, for example, restrictions of the right to terminate leases, payment/performance moratoriums and deferrals of loan payments. The obligation to file for insolvency has been suspended until 30 September 2020 to avoid companies being obliged to file for insolvency solely because the application process for governmental support cannot be completed under the current circumstances before the compulsory deadline to file for insolvency. This applies retroactively as of 1 March 2020 and, if required, the Mitigation Act provides for the possibility to extend the suspension period until 31 March 2021. In regular circumstances, under German law, a company must file for insolvency within three weeks after it has become insolvent or over-indebted.

France

Following President Macron's speeches on the crisis, the French government has deployed or will deploy an ambitious set of measures, including:

- tax forbearance (spanning both social contributions and income taxes);
- direct tax rebates for businesses facing important economic difficulties;
- the possibility for deferred payment of rent and electricity and fuel supply invoices for small businesses;
- lump payments of €1,500 for the self-employed or very small companies; eligible businesses are those which have, inter alia, a turnover of less than €1 million and are subject to mandatory closure or have experienced a decrease of turnover of at least 50% between April 2019 and April 2020; starting April 15, businesses facing the biggest financial difficulties may benefit from additional aid of up to €5.000;
- State-assisted refinancing of existing debt and access to new lines of credit from the French development bank;
- a State guarantee of up to €300 billion for bank credits to businesses;
- support from the French development bank in negotiating a rescheduling of bank loans;
- simplified and reinforced short-time working arrangements to maintain employment (French equivalent of the *Kurzarbeit*);
- support for the handling of disputes between customers and suppliers by an official ombudsman appointed by the French State;
- for those undertaking work as contractors or suppliers for the French State, a state of *force majeure* for all public contracts that disapplies all penalties for late delivery/performance; and
- exceptional financial aid for craftsmen and business owners corresponding to the amount of supplementary pension contribution paid on the basis of their income in 2018 that may amount to up to €1,250.

A special emergency plan for start-ups has also been announced: start-ups will benefit, inter alia, under certain conditions from a short-term refinancing scheme through bond issues and specific conditions for State guarantee for bank credits.

A ban on payment of dividends or repurchase of shares by large companies (i.e. those employing at least 5.000 employees in France and with a turnover of at least €1.5 billion in France) that benefit from State-aid guarantees or tax forbearance was announced on March 27, 2020.

The French government has also announced a specific investment plan for certain large listed companies facing difficulties and has adapted the French legal framework and implemented specific interim modifications to labour law, business and company law and the functioning of the French justice system (for further details see our update here).

Italy

Italy has been the country worst affected by the pandemic so far. Its government has issued an initial decree (named the "Cure Italy Decree"), which was followed by a second one. These decrees have introduced support measures for businesses that largely mirror the German and French ones, including:

- deferral of tax payments and the possibility for companies to convert deferred tax assets into tax credits;
- enhanced access to the *Cassa Integrazione*, the Italian equivalent of the *Kurzarbeit;*
- prohibitions on the revocation of credit to SMEs until 30 September 2020 (known as the "Extraordinary Moratorium"); and
- government-guaranteed loans at advantageous rates for companies in need of liquidity. The loans will be guaranteed by the government in the following percentages:
    - 100% for loans up to €800,000; and
    - 90% for loans up to €5 million;
- an extension of the sectors in which the government can restrict direct foreign investment into Italian companies; and
- an additional €400 million in State-guaranteed loans (through the Italian government's investment bank) to struggling companies (details of the scheme remain to be determined).

Local governments (including regional and municipal ones) are also deploying their own relief measures aimed at businesses.

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For more information regarding the coronavirus, please visit our Coronavirus Resource Center.

Please do not hesitate to contact us with any questions.

We at Debevoise are available to help access these measures; please reach out to the following contacts if you need any assistance:

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