



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.

LATEST KEY DEVELOPMENTS

Competition & State Aid

- European Commission publishes 2020 Report on Competition Policy
- European Commission adopts positive assessments of Recovery and Resilience Plans from an additional 2 Member States, and EU finance ministers give green light to first disbursements
- European Commission approves new and amended Member State measures to support the economy

Trade / Export Controls

- European Parliament adopts Report on post-COVID trade strategy

Medicines and Medical Devices

- *No noteworthy developments for this issue*

Cybersecurity, Privacy & Data Protection

- European Commission adopts equivalence decision for Swiss COVID digital certificates
- EU and UK discuss interoperability of EU Digital COVID Certificates

COMPETITION & STATE AID

Competition

European Commission publishes 2020 Report on Competition Policy (see [here](#))

On 7 July 2021, the Commission published its 2020 Report on Competition Policy. This is the 50th edition of the Report.

In presenting the Report, Margrethe Vestager, Executive Vice-President and Commissioner for Competition emphasized her view that the Commission's response to the pandemic affirmed the relevance of EU competition rules and policy, which will continue to play a critical role in the EU's economic recovery by maintaining a level playing field and safeguarding adequate conditions for fair trade. The Commission considers, in particular, that:

- The [State aid Temporary Framework](#), adopted in March 2020 as the crisis unfolded, has enabled Member States to use State aid rules to bolster the economy in the face of the pandemic.
- Guidance published by the Commission in April 2020 in a Communication has provided market participants with the main criteria to assess [cooperation projects addressing supply shortages of essential products and services](#) during the COVID-19 crisis, such as medicines and medical equipment.
- In exiting the crisis, the Commission's [State aid guidance in support of the Recovery and Resilience Facility](#) (see below) and a set of templates have assisted Member States investing in key priorities in flagship areas, in view of applying EU competition policy to support a green, digital and resilient recovery.

The Report also notes that while merger notifications initially declined at the onset of the pandemic, the Commission's overall merger enforcement activity in 2020 remained very similar to the preceding year, with the Commission adopting 352 merger decisions and intervening in 18 cases.

An accompanying Staff Working Document (see [here](#)) to the Report further details (i) the main legislative and policy developments in 2020 across the three competition instruments: State aid, Antitrust (including cartels) and Mergers, as well as (ii) specific enforcement actions in a sectoral overview.

State Aid

European Commission adopts positive assessments of Recovery and Resilience Plans from an additional 2 Member States (see [here](#)), and EU finance ministers give green light to first

As of 12 July 2021, the Commission had adopted 2 additional positive assessments of the Recovery and Resilience Plans of Croatia (€6.3 billion) and Cyprus (€1.2 billion). These plans set out the reforms and public investment projects foreseen for implementation with the support of the Recovery and Resilience Facility (RRF).

The 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).

**disbursements
(see [here](#))**

The following 14 Member State plans have already received the Commission's approval: Austria (€3.5 billion); Belgium (€5.9 billion); Denmark (€1.5 billion); France (€39.4 billion); Germany (€25.6 billion); Greece (€30.5 billion); Italy (€191.5 billion); Latvia (€1.8 billion); Lithuania (€2.2 billion); Luxembourg (€93 million); Portugal (€16.6 billion); Slovakia (€6.3 billion); Slovenia (€2.5 billion); and Spain (€69.5 billion).

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

9 Member State plans remain pending approval (see [here](#)), with the following total amounts requested under the RRF: Czechia (€7.1 billion); Estonia (€982.5 million); Finland (€2.1 billion); Hungary (€7.2 billion); Ireland (€1 billion); Poland (€23.9 billion); Romania (€29.3 billion); and Sweden (€3.2 billion). Malta's plan (€316.4 million) was also submitted on 13 July 2021.

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 2 remaining Member States (i.e. Bulgaria and 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.

On 13 July 2021, EU economic and finance ministers adopted the first batch of Council implementing decisions on the approval of national Recovery and Resilience plans.

Austria, Belgium, Denmark, France, Germany, Greece, Italy, Latvia, Luxembourg, Portugal, Slovakia and Spain received the green light for use of EU recovery and resilience funds to boost their economies and recover from the COVID-19 fallout.

The adoption of Council implementing decisions on approval of the plans permits the Member States to sign grant and loan agreements that will allow for up to 13% pre-financing.

**European
Commission
approves new and
amended Member
State measures to**

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

support the economy (see [here](#) and [here](#))

affected by coronavirus outbreak include:

- €14 million Greek scheme to support companies in the art and entertainment sectors affected by the coronavirus outbreak.
- €1.15 million Romanian scheme to support airlines affected by the coronavirus outbreak.
- €300 million Swedish and Danish subsidized interest rate loans to the Scandinavian airlines System (SAS) affected by the coronavirus outbreak.
- €750 million German guarantee scheme for the Travel Insolvency Fund to ensure that sufficient resources are available to refund consumers for cancelled travel services, in cases where package travel organizers become insolvent, in the context of the coronavirus outbreak.
- €1.5 million Bulgarian scheme to support farmers in the oil-bearing rose growing industry affected by the coronavirus outbreak.
- Italian scheme to compensate tour operators and travel agents for damages suffered due to the coronavirus outbreak, to be financed through the budget of the existing scheme, which amounts to a total of €625 million.

TRADE / EXPORT CONTROLS

European Parliament adopts Report on post-COVID trade strategy (see [here](#) and [here](#))

On 7 July 2021, the European Parliament adopted a Report (509 votes in favor, 63 against and 120 abstentions) on the trade-related aspects and implications of COVID-19, outlining the Parliament's priorities for a new EU trade policy in the post-pandemic period.

The report's main points include:

- highlighting the need for international cooperation, rather than protectionism, to deal with health emergencies. This would entail phasing out export restrictions currently in place in key vaccine manufacturing countries, including the EU's own export authorization scheme.
- encouraging the EU to engage in a “constructive dialogue” in the World Trade Organization (WTO) for a temporary patent waiver on COVID-19 vaccines.
- calling for the introduction of mandatory supply chain due diligence as well as better enforceability of trade and sustainable development chapters in the EU's trade agreements and in ongoing trade negotiations, including by allowing retaliatory measures in case of non-compliance.
- emphasizing that if cooperation with certain trade partners is not possible, the EU should use its trade policy as a geopolitical tool and pursue its interests through unilateral measures, such as its existing trade defence toolbox, anti-coercion measures, and a new tool to tackle foreign subsidies that is currently under preparation.

This report feeds into an ongoing review of EU trade policy.

CYBERSECURITY, PRIVACY & DATA PROTECTION

European Commission adopts equivalence decision for Swiss COVID digital certificates (see [here](#))

On 8 July 2021, the Commission adopted a Decision establishing the equivalence of COVID-19 certificates issued by Switzerland to the EU Digital COVID Certificate. Switzerland is the first country from outside the 30 countries of EU and EEA area to be connected to the EU's system.

Holders of a Swiss COVID certificate (Swiss nationals, EU citizens, and third-country nationals legally staying or residing in Switzerland) may now travel inside the EU under the same conditions as holders of an EU Digital COVID Certificate. Switzerland has also agreed to accept the EU Digital COVID Certificate for travel to Switzerland.

The Commission Decision noted, in particular, that on 9 June 2021, a technical test had demonstrated that Switzerland is technically capable of verifying EU Digital COVID Certificates issued by Member States using the trust framework established on the basis of Regulation (EU) 2021/953 on a framework for the issuance, verification and acceptance of interoperable EU Digital COVID Certificates.

The Commission Decision came into effect on 9 July 2021.

EU and UK discuss interoperability of EU Digital COVID Certificates (see [here](#))

On 6 July 2021, European Commissioner for Justice, Didier Reynders, responded to questions of the European Parliament on behalf of the Commission regarding the EU Digital COVID Certificates ("Certificates").

Commissioner Reynders' response addressed, in particular, the EU's recognition of COVID-19 certificates of third countries, including the UK.

He stated that: "*where certain requirements are met, the Commission can issue a decision establishing that COVID-19 certificates (of vaccination, testing negative, or recovery) of a third country are to be considered as equivalent to EU Digital COVID Certificates ('equivalence decision') for the purpose of facilitating the holders' exercise of the right of free movement*".

As concerns the UK, Commissioner Reynders added that the Commission and the UK have already engaged in technical exchanges to establish possible interoperability of the systems.

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