



# 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 re-approves €1.2 billion rescue loan to TAP Air Portugal
- European Commission adopts positive assessments of Recovery and Resilience Plans from an additional 2 Member States
- European Commission approves new and amended Member State measures to support the economy

### Trade / Export Controls

- Slovenian Presidency of the Council of the EU to propose WTO-level negotiations for temporary suspension of vaccine patents

### Medicines and Medical Devices

- *No noteworthy developments for this issue*

### Cybersecurity, Privacy & Data Protection

- ENISA hosts Workshop on remote identity proofing

## COMPETITION & STATE AID

### State Aid

#### European Commission re-approves €1.2 billion rescue loan to TAP Air Portugal (see [here](#))

On 16 July 2021, the Commission issued a decision re-approving €1.2 billion in rescue aid to TAP (Portugal's national airline).

This re-approval follows the General Court's (GC) judgment of 19 May 2021 (case T-465/20, Ryanair/Commission, (see [here](#))), which annulled the Commission's initial rescue aid decision of 10 June 2020 (see also *Jones Day COVID-19 Update No. 49 of 2 June 2021*). The GC gave the Commission the possibility to adopt a new decision within two months to address shortcomings in its initial decision. The new Commission decision on the TAP rescue aid now further specifies the reasons for approving the aid, particularly in relation to the financial situation of the TAP group and its shareholders and the related difficulties caused by the COVID-19 pandemic.

Also on 16 July 2021, the Commission opened an investigation to evaluate the compatibility of Portugal's planned restructuring aid to TAP with EU rules on State aid granted to companies in difficulty. On 10 June 2021, Portugal formally notified €3.2 billion in restructuring aid to the Commission, in view of financing a restructuring plan of the TAP Group.

The opening of the Commission's investigation gives Portugal and interested third parties the opportunity to submit comments. It does not prejudice the outcome of the investigation.

#### European Commission adopts positive assessments of Recovery and Resilience Plans from an additional 2 Member States (see [here](#))

As of 19 July 2021, the Commission had adopted 2 additional positive assessments of the Recovery and Resilience Plans of Czechia (€7 billion) and Ireland (€989 million). 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).

The following 16 Member State plans have already received the Commission's approval: Austria (€3.5 billion); Belgium (€5.9 billion); Croatia (€6.3 billion); Cyprus (€1.2 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.

7 Member State plans remain pending approval (see [here](#)), with the following total amounts requested under the RRF: Estonia (€982.5 million); Finland (€2.1 billion); Hungary (€7.2 billion); Malta (€316.4 million); Poland (€23.9 billion); Romania (€29.3 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 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 initial batch of Council implementing decisions on the approval of national Recovery and Resilience plans for 12 Member States (Austria, Belgium, Denmark, France, Germany, Greece, Italy, Latvia, Luxembourg, Portugal, Slovakia and Spain), who received the first green lights for use of EU recovery and resilience funds to boost their economies and recover from the COVID-19 fallout (see [here](#)).

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 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:

- € 660 million Czech scheme to support self-employed and partners in small limited liability companies affected by the coronavirus outbreak.
- €100 million Italian scheme to support foreign cinematographic and audiovisual productions.
- €2.5 billion Italian scheme to support self-employed and healthcare professionals in context of coronavirus outbreak.
- €900 million Swedish compensation scheme for damages suffered due to the coronavirus outbreak.
- €2 million Estonia scheme to support organizers of cultural events and conferences in the context of the coronavirus outbreak.
- €5.9 million Swedish scheme for liquidity support to mink fur

producers in the context of the coronavirus outbreak.

- €878 million Italian scheme to incentivize integration of unemployed workers in the labor market in the context of the coronavirus outbreak.
- €1.78 million Czech scheme to support terrestrial television network operators in the context of the coronavirus outbreak.
- €1 billion Spanish recapitalization scheme to provide debt and capital support to companies affected by the coronavirus outbreak.
- €10 million scheme to compensate companies in Flemish Region for events rebooking costs due to the coronavirus outbreak.

## TRADE / EXPORT CONTROLS

**Slovenian Presidency of the Council of the EU to propose WTO-level negotiations for temporary suspension of vaccine patents (see [here](#))**

In meetings held from 12-15 July 2021, the Slovenian Presidency of the Council of the EU set out its priorities until end-2021.

On international trade, members of the European Parliament's Committee on International Trade (INTA) met with Slovenian Minister of Economic Development and Technology, Zdravko Počivalšek. The MEPs focused *inter alia* on the topic of vaccines and trade, arguing for dialogue on a temporary suspension of vaccine patents. The MEPs were informed of the Presidency's intention to propose a compromise for negotiation at the WTO level.

## CYBERSECURITY, PRIVACY & DATA PROTECTION

**ENISA hosts Workshop on remote identity proofing (see [here](#))**

On 14 July 2021, the European Union Agency for Cybersecurity ("ENISA") organized a Workshop on remote identity proofing, which enables the identification of individuals, without relying on physical presence. The COVID-19 pandemic has brought remote identity proofing into the spotlight with companies and public authorities.

Use of remote identity proofing can arise where trust in the identity of a natural or legal person is essential (e.g., financial services, e-commerce, travel industry, human resources, matching platforms, public administrations and online gambling),

For instance, customers can use remote identity proofing by showing themselves over a webcam or a mobile phone, along with their ID card or passport.

The Workshop addressed the risks raised by remote identity proofing, including technologically enhanced deluding attacks, such as deepfake video injection, high-quality 3D silicone masks and video manipulation of an identity document.

The Workshop also explored countermeasures (e.g., active measures such as requesting the user to read a random set of numbers) and anticipated future challenges that companies and individuals will face when using remote identity proofing methods (e.g. developing synergies between AI and human operators to spot fakes).

ENISA further announced the 7th Trust Service Forum on 21 September 2021, hosted with the European Commission, which will focus on emerging issues related to trust services across Europe.

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