

COVID-19: ADOPTED MEASURES BY EU MEMBER STATES

Date: 31 March 2020

EU Antitrust, Competition, & Trade Regulation Alert

By: Miguel A. Caramello Alvarez, Philip Torbøl, Dr. Annette Mutschler-Siebert, M. Jur. (Oxon)

Europe has been hit hard by the spread of the coronavirus (COVID-19). Although Italy and Spain have reported a particularly high number of cases, no country is spared. To counter the further spread of COVID-19 and ensure that health services are not overwhelmed by the situation, Member States of the European Union (EU) have enacted radical measures, which will have a strong impact on businesses. These include, in particular, restrictions of the freedom of movement of persons and goods on, in, and out of their territories. The measures also affect employment law: they create new obligations for employers (e.g., regarding hygiene), give more flexibility for the employees' working arrangements (e.g., home working, short-term employment), and protect employees pay and benefits in case of a layoff (e.g., guaranteed revenue). In that regard, the EU has issued guidelines for its member states to ensure coherence at EU-level, and to make sure the free movement of goods within the EU is not unduly affected. The EU has also taken steps to adapt its rules to the current situation (particularly rules pertaining to the transport sector).

Aware of the harsh impact these measures will have on businesses and the economy in general, member states have come up with various aid schemes, which vary from country to country. Mostly, they take or will take the form of cash injections, loan backing, tax deferrals, and postponed deadlines for businesses' administrative obligations. At EU-level, the EU Commission has acted on border control, is mobilizing funds to relieve the economy, and reviewing its state aid and fiscal rules.

EXAMPLES OF MEASURES

Belgium

The Belgian federal government has enacted measures affecting labour and restricting freedom of movement. By Ministerial Decree, the Belgian government prohibited all public or private activities of cultural, social, festive, folkloric, sportive, religious or leisurely nature, called off school trips and youth movement activities, and instructed people present on its territory to stay home. The Belgian government provided a limitative list of "public and private establishments, undertakings and services that are essential to the protection of vital needs of the Nation and of the needs of the population." On 6 and 20 March, the Belgian government announced measures to help individuals and businesses endure this crisis, such as the postponement of deadlines for tax and social security payments, cash relief for self-employed workers and businesses, and increased unemployment benefits. On 31 March, the Belgian Parliament passed a law allowing the Federal Government to guarantee loans for up to €50 billion.

France

The French government has closed off French ports and waters to ships transporting more than 100 people, including overseas, and has closed off most public and private establishments, such as conference and spectacle rooms, malls, bars, catering services (including restaurants), dancing and gambling rooms, sport centres, libraries, museums, and schools. Like the Belgians, the French government provided a list of establishments deemed essential and which may remain open. Most recently, the government authorized the representatives of the State in the Departments to requisite public and private establishments such as restaurants, churches or shops for accommodation and storage purpose. Regarding aid schemes, France unlocked €45 billion in first aid for small businesses, guarantee loans to up to €300 billion, and will set up a "Solidarity Fund" for small businesses that suffered in March, endowed with "at least" €1 billion.

Germany

The German federal government has taken measures to restrict cross-border traffic across the borders between Germany and Austria, Denmark, France, Luxembourg, and Switzerland. In the east, Poland and the Czech Republic have already closed their borders. The borders with the Netherlands and Belgium are still open. Overall, however, commuters and the free movement of goods are not legally restricted at any German border. Nevertheless, there are long waiting times at the borders due to controls. Germany had also banned the export of medical protective equipment (e.g., face masks) for a few days. This ban has meanwhile been lifted again as a result of a Europe-wide agreement. Following a joint decision with the federal government, all German states have taken measures to implement a ban on contact among the population. Some states have issued even stricter regulations. This is due to the federalism in Germany. For example, Bavaria has closed more shops than other federal states and Mecklenburg-Western Pomerania has asked tourists to leave the federal state and is refusing to allow travellers to continue their journey. All over Germany, however, schools, kindergartens and universities are closed until April 20. The same applies to cultural, leisure, sports, and recreational facilities. Excluded from the ban are supermarkets and other important facilities for daily use. In addition, there is no nationwide curfew, but rather curfew restrictions. As far as aid schemes are concerned, the German authorities have taken various measures, such as flexible short-time working and working-time arrangements, tax deferrals, and, above all, an unlimited promise of aid in the form of loans, guarantees, and cash. These measures were adopted by the German legislature in calendar week 13 and can now be applied for in the federal states.

Italy

In Europe, Italy is the country most affected by the COVID-19 outbreak. Faced with this situation, the Italian government has taken radical measures to protect its population and the population of neighbouring countries. For example, it has prohibited all movement of people within its territory, except for essential travels and errands motivated by proven vital or professional needs or for reasons of health. Like the Germans, Italians have restricted the export of personal protection equipment (such as face masks); unlike the Germans, they have not lifted the ban. The Italian government has moreover prohibited all gatherings on Italian territory and has suspended all school, sportive and leisurely activities of either public or private nature. Recently, in an attempt to further minimise time spent outside, they have decided to close parks and all public places, and exercising outside is also prohibited. They are also favouring home working whenever it is possible and have imposed extraordinary requirements on employers with regard to employees' health and hygiene procedures.

Italy has also decided to close all nonessential factories. The government decided to close all productive activities that are not strictly necessary to ensure essential goods and services within the whole national territory. The

decree presented an exhaustive list of activities that are allowed to remain open. Supermarkets, pharmacies, banks, post offices, insurance offices, and public transport are considered essential and will continue to function. The government also announced that it would adopt further measures to support the economy in the following week.

As for aid schemes, Italy is bracing for a harsh hit on its economy. To ease the blow, the government has suspended tax and social security payments for certain, most-affected sectors (such as tourism, catering); it has set up a relief fund endowed with €1.2 billion in cash; and it has launched a "Made in Italy" promotion platform with a €150 million budget. It has also taken other measures such as the extension of deadlines for tax authorities to detect and prevent tax evasion, the grant of funds for e-learning activities, the ease of requirements to become doctor, etc.

More recently, it has adopted a decree making €4.3 billion immediately available to mayors to deal with their citizens' needs. Further €400 million would be provided in a special fund for struggling families and people living in poverty.

The Netherlands

The Dutch government has taken a somewhat different approach to the COVID-19 outbreak, tabling on a "collective immunity" response to the outbreak. However, the Netherlands is slowly going into lockdown, not by governmental order. Although the measures imposed are less radical than the ones enacted in other countries, several dispositions were adopted in the affected sectors. For instance, employees are currently urged to work from home, to spread their working hours wherever possible and people should remain at a security distance of at least 1.5 meters from each other at all times. All gatherings, with little exceptions, are prohibited and establishments such as casinos, beauty salons and hairdressers must be shut down. While stores and public transport are still allowed to remain operative as usual, they are forced to ensure that people comply with the abovementioned security distance, if necessary by applying a door policy. Conscious of the impact the COVID-19 outbreak will nonetheless have on the Dutch economy, the government of the Netherlands has announced a plethora of aid schemes, such as the creation of a small- to medium-enterprise credit guarantee scheme, a cash injection into the hotel business, a cash relief for self-employed workers and businesses and the postponement of tax payment deadlines.

Spain

The Spanish government has encouraged people present on its territory to work from home, and is promoting temporary staff adjustment through the flexibility of the Spanish temporary unemployment regime. The Spanish authorities have closed off their borders, allowing only Spanish citizens, permanent residents and their families to enter the Iberian nation. Work-wise, the Spanish government has allowed workers to adapt their working time in case they are affected by COVID-19 or need to take care of someone who is. It has also facilitated access to benefits for cessation of activity for self-employed workers. Regarding aid schemes, the Spanish government has postponed the payment of tax and social security contribution, eased unemployment benefit entitlement criteria, and created a public guarantee for loans for an amount of €100 million. Spain has also passed legislation preventing foreign, non-EU acquisition of Spanish companies.

Spain has followed Italy's initiative and has closed all non-essential workplaces for two weeks. The measure will last until 9 April. The Government has defined "essential services" as those considered necessary for the maintenance of basic social functions (health, security, social and economic wellbeing of citizens), or the efficient

working of the institutions of state and public administrations. Furthermore, all companies that somehow related to the functioning of remaining activities are also allowed to remain operational.

The United Kingdom

While generally behind much of mainland Europe, the UK government has begun to introduce more restrictive measures, similar to those already in place in Italy, Spain, and France. As of 23 March 2020, all nonessential shops and businesses have been ordered to close and people in the UK have been ordered to stay at home other than to buy food and medicine, take exercise, or care for the vulnerable. Even these activities should be kept to an absolute minimum and the police will have enforcement powers to use against those in breach. These new restrictions follow the closure of schools, which were shut indefinitely (except for the children of key workers and vulnerable children) from 20 March. The UK government has introduced a range of aid measures for businesses, which includes a Job Retention Scheme under which the government will pay up to 80% — capped at £2,500 per month — of any furloughed employee's salary, to avoid redundancies. VAT and income tax payments have been deferred, and there will be relief for statutory sick pay for small- and medium-sized enterprises. To ensure organisations can maintain liquidity, the government has introduced a 12-month business rates holiday for the retail, hospitality, and leisure sectors and a range of grants and loans of varying sizes that businesses can apply for. Further measures are expected to be announced shortly.

The European Union

The EU has taken steps to prevent the spread of COVID-19 and ensure some coordination and coherence at the EU level in cooperation with member states. In that regard, it has put a halt on all nonessential travels from abroad into the EU and has enacted an export ban on certain medical devices outside of the EU, with some exemptions such as for the EFTA countries (Iceland, Liechtenstein, Norway, and Switzerland) and some countries with "particular dependency" to certain EU member states. The EU has moreover adapted some of its rules to the current situation, such as the ones pertaining to airport slot allocations, passenger rights (particularly for air and sea transport), state aid, fiscal rules, and the EU Solidarity Fund. It is also redirecting funds towards research against COVID-19 (up to €47.5 million) and will enact measures in the most affected sectors of the economy, such as transport, tourism, and trade. As for direct aid schemes, the EU has set up a €37 billion Coronavirus Response Investment Initiative for small businesses and the health care sector, while the European Central Bank announced a €1 trillion loan backing and a €750 billion stimulus to counterbalance the negative impact COVID-19 will have on the economy. The EU has also announced an adaptation of its FDI screening rules to prevent foreign acquisitions of strategic companies, and has provided guidance to Member States regarding the current restrictions on movement they have enacted.

KEY CONTACTS



MIGUEL A. CARMELLO ALVAREZ

COUNSEL
BRUSSELS
+32.(0)2.336.1946
MIGUEL.CARMELLOALVAREZ@KLGATES.COM



PHILIP TORBØL

PARTNER
BRUSSELS
+32.(0)2.336.1903
PHILIP.TORBOL@KLGATES.COM



ANNETTE MUTSCHLER-SIEBERT

PARTNER
BERLIN
+49.(0)30.220.029.355
ANNETTE.MUTSCHLER-SIEBERT@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.