COVID-19 KEY EU DEVELOPMENTS POLICY & REGULATORY UPDATE

No. 49 | 2 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

- EU General Court annuls COVID-19-related State aid decisions for inadequate reasoning
- European Commission receives Recovery and Resilience Plans from 23 Member States
- EU approves new and amended Member State measures to support the economy

Trade / Export Controls

- European Parliament's Committee on International Trade adopts Report on trade-related aspects and implications of COVID-19

Medicines and Medical Devices

- European Commission announces first Member States to issue EU Digital COVID Certificate

Cybersecurity, Privacy & Data Protection

- European Commission announces launch of technical backbone of EU Digital COVID Certificate

COMPETITION & STATE AID

State Aid	
EU General Court annuls COVID-19-related State aid decisions for inadequate reasoning (see here and here)	On 19 May 2021, the General Court ("GC") annulled two decisions of the European Commission, following Ryanair's challenges of State aid granted to respectively TAP (Portugal's national airline) and KLM (subsidiary of the Air France-KLM holding company). In June and July 2020, TAP and KLM received government cash injections through Portuguese and Dutch aid measures of respectively EUR 1.2 billion and EUR 3.4 billion to address immediate liquidity needs amid the COVID-19 outbreak. In annulling the two decisions, the GC set out its view that the Commission had failed to provide adequate reasons for approving the aid measures: – Regarding the TAP decision, in the GC's opinion, in particular, the Commission had merely provided details on the beneficiary's financial situation and the difficulties caused by the COVID-19 pandemic, rather than conducting the requisite assessment (e.g., whether TAP belongs to a group and, if so, whether the difficulties faced by TAP were intrinsic and not the result of an arbitrary allocation of costs within the group and whether those difficulties were too serious to be dealt with by the group itself). – Regarding the KLM decision, in the GC's opinion, in particular, the Commission had not adequately set out the elements necessary for assessing a complex situation, featuring the parallel grant of two State aid measures to two subsidiaries of the same holding company (in May 2020, Air France, another subsidiary of the same Air France-KLM holding company, had already received €7 billion in State aid). Rather, the Commission simply concluded that KLM was the beneficiary of the contested aid measure and that the Dutch authorities had confirmed that the financing granted to KLM would not be used by Air France. Nevertheless, the GC temporarily suspended the effects of the annulment of the two decisions pending the adoption of new Commission decisions. The GC deemed that in light of the serious disturbances to the economy caused by the COVID-19 pandemic, calling into question such aid would have particularly damaging consequences for the Portuguese and Dutch economies and air transport services. On the same day, the GC dismissed another Ryanair challenge to a EUR 10 billion Spanish solvency support fund for companies experiencing temporary difficulties due to the pandemic. The GC rejected all of Ryanair's claims, indicating its view that the economic support granted by the Spanish government constitutes a State aid scheme that is proportionate and non-discriminatory (see here). Since 1 May 2020, Ryanair has brought a total of 21 appeals against Commission decisions authorizing State aid granted by Member States to the benefit of national air carriers.

	On 17 February 2021 and 14 April 2021, the GC rejected five of those appeals. On 10 June 2020 and 13 July 2020, Ryanair appealed the first two GC rulings before the European Court of Justice.
European Commission receives Recovery and Resilience Plans from 23 Member States (see here)	As of 2 June 2021, the Commission has received Recovery and Resilience Plans from an additional 5 Member States, for a total of 23 Member States (*see also Jones Day COVID-19 Update No. 46 of 5 May 2021)*. These Member State plans set out the reforms and public investment projects foreseen for implementation with the support of the Recovery and Resilience Facility (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 latest Member State plans request the following total amounts under the RRF: – Czechia (€7.1 billion) – Finland (€2.1 billion) – Ireland (€1 billion) – Romania (€29.3 billion) – Sweden (€3.2 billion) 18 Member State plans had already requested the following total amounts under the RRF: Austria (€4.5 billion); Belgium (€5.9 billion); Croatia (€6.4 billion); Cyprus (€1.2 billion); Denmark (€1.6 billion); France (€40.9 billion); Germany (€27.9 billion); Greece (€30.5 billion); Hungary (€7.2 billion); Italy (€191.5 billion); Latvia (€1.8 billion); Lithuania (€2.2 billion); Luxembourg (€93 million); Poland (€23.9 billion); Portugal (€16.6 billion), Slovakia (€6.6 billion); Slovenia (€2.5 billion); and Spain (€72 billion). Commission assessment of plans. The Commission will assess the Member State plans within the next two months. The RRF guidelines, notably, 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*). In assessing the Member State plans, the Commission 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. Based on the Commission's proposals, the Council will then have four weeks to approve the Member State plans. The Commission will continue to closely engage with the remaining Member States to deliver robust national recovery plans.

EU approves new and amended Member State measures to support the economy (see here and here)	Since the onset of the coronavirus outbreak, the European 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: • €8.4 million Bulgarian scheme to support tour operators affected by the coronavirus outbreak • €9.35 million Latvian scheme to support operators in the poultry sector affected by the coronavirus outbreak • €5.3 million Estonian scheme to support film producers and distributors and cinemas in the context of the coronavirus outbreak • Modifications to Maltese wage subsidies scheme to support companies affected by the coronavirus outbreak, including an increase in budget to €750 million • €6 million Slovenian scheme to support beef cattle breeders affected by the coronavirus outbreak • €25 million Irish scheme to support commercial venues, producers and promoters of live performances in the context of the coronavirus outbreak • €20 million Italian scheme to support companies active in road passenger transport affected by the coronavirus outbreak • €7.9 million Czech scheme to support workers and companies in the audiovisual sector in the context of the coronavirus outbreak • €10 billion German scheme to compensate companies for damages suffered due to the coronavirus outbreak • Up to €31 million scheme to support mink-fur animal farmers in the context of the coronavirus outbreak
TRADE / EXPORT CONTROLS	
European Parliament's Committee on International Trade adopts Report on trade-related aspects and implications of COVID-19 (see here)	On 25 May 2021, the European Parliament's Committee on International Trade ("INTA") adopted its own-initiative Report on trade-related aspects and implications of COVID-19, with 29 votes in favor, 3 against, and 9 abstentions. The Report is one facet of INTA's assessment of the role of trade as a tool for sustainable recovery and for attaining open strategic autonomy under the European Commission's previously-announced Trade Policy Review (*see Jones Day COVID-19 Update No. 43 of 7 April 2021*). Towards tackling health emergencies, the Report calls for international cooperation, rather than competition or protectionism. In this respect, the Report urges the lifting of export restrictions by US, the UK, China and India, while advising that the EU's own temporary export authorization scheme should shift towards serving as a transparency tool. The Report also advocates, as supported by some INTA members, that the

	EU should engage with the World Trade Organisation ("WTO") regarding a temporary waiver from the intellectual property rights protection for COVID-19 vaccines (*see Jones Day COVID-19 Update No. 48 of 26 May 2021)*. On supply chains, the Report highlights that the pandemic revealed vulnerabilities and global dependencies. Calling for diversified, fair, resilient and sustainable EU supply chains, the Report supports measures such as mandatory due diligence across supply chains, as well stronger trade defence tools. During the 5-8 July 2021 plenary session, the Parliament is expected to vote on the Report.

MEDICINES AND MEDICAL DEVICES

European Commission announces first Member States to issue EU Digital COVID Certificate (see here)	On 1 June 2021, the Commission announced that seven Member States (Bulgaria, Czechia, Denmark, Germany, Greece, Croatia, and Poland) had decided to start issuing the first EU Digital COVID Certificates. This follows the launch on the same day of the so-called "EU Gateway," the technical backbone of the EU Digital COVID Certificate that will ensure the authenticity of certificates. The seven Member States above-mentioned have successfully tested and connected to the Gateway. The Certificate, which will facilitate safe free movement of citizens in the EU during the COVID-19 pandemic, will serve as proof that a person: (i) is vaccinated against COVID-19; (ii) received a negative test result; or (iii) recovered from COVID-19 (*see also Jones Day COVID-19 Update No. 48 of 26 May 2021*). The Regulation governing the COVID Certificate will apply from 1 July 2021. Still, all Member States can now start using the system on a voluntary basis, following successful testing of the Gateway (23 Member States thus far) and where ready to issue and verify certificates. An overview of the status of Member States on Gateway testing and issuance of the COVID certificates is available here. *For further details on the Digital COVID Certificate, please see below Section on Cybersecurity*.

CYBERSECURITY, PRIVACY & DATA PROTECTION

European Commission announces launch of technical backbone of EU Digital COVID Certificate (see here)	On 1 June 2021, the Commission announced the launch of the so-called "EU Gateway," the technical backbone of the EU Digital COVID Certificate that will ensure the authenticity of certificates (*see also Jones Day COVID-19 Update No. 48 of 26 May 2021*). The EU Gateway enables verification of the digital signatures contained in the QR codes of all COVID certificates, without the processing of personal data. Through the Gateway, the signature keys needed for such verification are stored on servers at national level. These keys can be accessed by national verification apps or systems all across the EU. Personal data encoded in the certificate will not pass through the Gateway, as this is unnecessary for

verifying the digital signature.

The Regulation will apply as from 1 July 2021 with a six week phasing-in period for the issuance of the COVID certificates for Member States that need additional time.

For further details on the Digital COVID Certificate, please see above Section on Medicines.

LAWYER CONTACTS

Renato Antonini
Partner, Government Regulation; Antitrust & Competition Law
Brussels
rantonini@jonesday.com
+32.2.645.14.19

Dr. Jörg Hladjk
Partner, Cybersecurity, Privacy & Data Protection; Government Regulation; Technology
Brussels
jhladjk@jonesday.com
+32.2.645.15.30

Kaarli H. Eichhorn
Partner, Antitrust & Competition Law; Government Regulation; Technology
Brussels
keichhorn@jonesday.com
+32.2.645.14.41

Cristiana Spontoni
Partner, Health Care & Life Sciences; Government Regulation
Brussels
cspontoni@jonesday.com
+32.2.645.14.48