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State aid measures to support companies affected by the Covid-19 pandemic – what opportunities exist?

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The corona virus (Covid-19) is spreading across the world like a wildfire. We already know that the virus does not only affect human health – it affects the global economy as well. Travel is restricted, major events are canceled and restaurants and shops are closing in parts of Europe. One question that has arisen is what possibilities the state and the municipalities have to provide economic support to companies or sectors that are suffering as a consequence of the pandemic.

EU state aid rules impose strict requirements for when the state can grant financial support to companies. This is an important element in maintaining free competition within the EU. However, the legal framework provides considerable opportunities to grant financial support as long as the rules are followed.

The Swedish Government recently presented a proposal for measures to support companies that have been financially affected by the Covid-19 pandemic and the President of the European Commission, Ursula von der Leyen, has announced that the EU will create a Covid-19 Respond Investment Initiative that will amount to EUR 37 billion. On 12 March 2020 the Commission approved the first Covid-19 related state aid (which aims of preventing the spread in Denmark) in record time. Loans up to SEK 500 billion to companies via the

banks has also been announced by the Swedish Central Bank. These measures are presented below after a short explanation of the term state aid.

Why can EU state aid rules prohibit certain support measures?

Under EU law, a general prohibition on state aid applies. The state aid regulatory framework is monitored by the European Commission. The concept of state aid is broad and encompasses a wide range of different measures. State aid is aid where a benefit is directly or indirectly granted through public funds, the measure favors certain companies or the production of certain goods or services, and this distorts or threatens to distort competition and trade between the EU Member States. Aid is prohibited if no exception applies.

The prohibition on state aid does not only cover direct monetary contributions, the prohibition covers all measures that favor certain companies financially, e.g. sales below market price, rental reductions, loans on favorable terms and guarantees without a market-based remuneration. A company that has received illegal state aid must repay the aid, plus interest calculated from the date on which the aid was made available to the beneficiary. The price for receiving illegal state aid can thus be high. An important part of the regulatory framework is that all state aid measures must be

approved in advance by the Commission. Thus, Member States may not grant state aid before the Commission has examined and approved the measure.

Possibilities to provide state aid – exceptions from the prohibition

The EU Treaty states that, in some cases, state aid is or may be compatible with the internal market and in that case permissible. Aid measures may be permitted if e.g. the aid is of minor importance or if the benefit of the aid is assessed to be greater than the damage to competition. Furthermore, there are many exceptions to the prohibition in e.g. Commission regulations.

Furthermore, there is an opportunity for the Member States to provide support to repair damage caused by natural disasters or other exceptional occurrences. This is an exception that has primarily been used during natural disasters. However, the Commission recently approved a state aid scheme directed towards Danish event organizers with reference to this exception.

Another example is the possibility of providing aid in the form of so-called rescue or restructuring aid to companies in difficulty. A company is considered to be in difficulty if, in the absence of government intervention, it will almost certainly go out of business in the short or medium term. In order for rescue or restructuring aid to be considered, it is also necessary that the aid contributes to an objective of common interest. This may be the case if there is a risk of disruption to an important service which is hard to replicate and where it would be difficult for any competitor simply to step in (e.g. a national infrastructure provider) or if the exit of an undertaking with an important systemic role (e.g. a supplier of an important input) in a particular region or sector would have potential negative consequences.

As a general rule, state aid shall not be granted to companies in financial difficulties (e.g. if 50 percent of the company's share capital is consumed or if the company can be assumed to be insolvent).

In addition to the exceptions mentioned above, there are also sector-specific rules on state aid relating to e.g. airports and the transport sector as well as regional

support, environmental support, infrastructure support etc.

The Swedish Government has announced measures for government subsidized wages for part-time work

In 2014, Sweden introduced a system for government subsidized wages which is applicable in certain situations when the employer must either lay off employees or reduce their working hours. The regulation can be applied in severe economic downturns, or when a severe economic downturn is imminent, and aims of avoiding layoffs at companies that meet a declining demand by temporarily reducing employees' working hours while the employees will only lose a small portion of their wages.

In a new bill on subsidized part-time work, which was submitted to the Council on Legislation on 4 March 2020, the Swedish Government proposes that, the rules on government subsidized wages for part-time work should be applicable, during limited time periods, to individual employers affected by temporary and serious financial difficulties that could not reasonably have been foreseen or avoided through other available measures. The new support system will mean that an employer can be granted support with regard to the circumstances of the individual employer. If the proposal is adopted, the changes will come into force on August 1, 2020.

However, on 11 March 2020 the Government, the Centre Party and the Liberal Party presented a proposal for an additional amending budget under which the new rules on government subsidized wages for part-time work should enter into force as early as May 1, 2020. The aim of the proposal is to provide support to companies that have suffered financially as a consequence of the Covid-19 pandemic. The 2014 support scheme was notified and approved by the European Commission, in accordance with the EU state aid rules. The Commission found that the scheme did not constitute state aid within the meaning of EU law because it was not selective, i.e. the aid scheme did not favor certain companies or the production of certain goods. The Government has therefore come to the conclusion that the new extended aid scheme for government subsidized wages for part-time work is not

covered by the prohibition on state aid.

Recently announced proposals from the Government because of Covid-19

The Government also proposes that companies shall be given the opportunity to defer payment of payroll taxes and the employees' provisional tax for up to one year, provided that these are taxes and fees for a maximum of two months.

Loans up to SEK 500 billion to companies via the banks announced by the Swedish Central Bank

On 13 March 2020 it was announced that in order to avoid robust companies being knocked out as a result of the spread of the coronavirus, the Executive Board of the Riksbank, the Swedish Central Bank, has decided to lend up to SEK 500 billion to companies via the banks. The Riksbank is offering the banks up to SEK 500 billion against collateral for onward lending to non-financial companies operating in Sweden. The loans will be granted at a variable interest rate equivalent to the Riksbank's repo rate, at present 0 per cent, and they will have a maturity of 2 years. The aim is to maintain the supply of credit to Swedish companies. The decision was taken at an extraordinary monetary policy meeting. The Riksbank is in this way contributing together with other authorities to limiting the effects of the coronavirus pandemic. The Riksbank also stated that it is prepared to take further measures and to supply necessary liquidity.

The Commission's planned measures

At a press conference on 10 March, 2020 the president of the Commission, Ursula Von der Leyen, announced several measures that the Commission will take to counter the financial consequences of Covid-19. Von der Leyen stated, among other things, that the Commission will ensure that state aid can be granted to companies in need and that the flexibility allowed under the EU rules is utilized.

Von der Leyen stated that the Commission will return with concrete proposals to Eurogroup (consisting of the finance ministers of the euro area) on Monday 16 March and the Commission intends to clarify the rules that

apply to the EU Member States shortly. Furthermore, the Commission plans to establish a EUR 25 billion Covid-19 Response Investment Initiative, and on March 13, 2020, this number was increased to EUR 37 billion, from which support will be directed to healthcare, small and medium-sized enterprises, the labor market and other vulnerable sectors of the economy.

The first Covid-19 state aid approved by the Commission - Danish aid to event organizers to prevent the spread of infection

On 12 March 2020, the Commission approved a Danish aid scheme amounting to DKR 91 million (EUR 12 million) to compensate event organizers for the damage suffered as a result of the cancellation of large events, involving more than 1,000 participants, or events targeted at risk groups such as the elderly or other high-risk groups, due to the Covid-19 outbreak. Under the aid scheme, organizers are entitled to receive compensation for the losses suffered as a result of cancellations or postponements of events for which tickets have already been sold.

This is the first and so far only state aid measure notified by a Member State to the Commission in the context of the Covid-19 outbreak. The Commission approved the aid scheme in accordance with the EU state aid rules within 24 hours of receipt of the notification from Denmark. This aid scheme will likely be followed by a series of measures taken by the Member States.

How can Delphi assist?

Delphi assists both public and private actors in state aid related questions. From a risk perspective, it is important for both the grantors and the recipients of state aid to ensure that the aid is compatible with the EU state aid rules. If you have questions regarding state aid, you are welcome to contact any of our experts in the field who are updated on the recent developments.

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