CLIFFORD CHANCE

CORONAVIRUS: STATE AID MEASURES TO HELP GREEK COMPANIES IN NEED

The recent outbreak of Coronavirus is a major economic shock to the global economy. Against this background, the European Commission decided to facilitate the granting of state aid by the EU Member States. In Greece, the Government has announced a EUR 3.8 billion package of aid measures.

Key issues

- To tackle the economic impact of the COVID-19 crisis the EU and its member states make state aid more easily accessible.
- Greece's Minister of Finance announced a specialized package of financing tools, including suspension of taxes and levies as well as subsidised interest rates
- Most of the announced measures will need to be further clarified.
- It is unclear to what extent the measures will need to be cleared by the European Commission before they can be implemented.
- The European Commission has relaxed the requirements for state aid granted by the EU member states.

INTRODUCTION

The Coronavirus ("**COVID-19**") outbreak is causing a major economic shock, with disruption of global supply chains, volatility in financial markets, consumer demand shocks and negative impact in key sectors like travel and tourism. The European Commission ("**Commission**") has stated that it is willing to facilitate the granting of state aid by the EU member states to mitigate the consequences of this pandemic and to support firms hit by the economic impact. Greece and other member states have already announced several measures in this regard.

GREEK AID MEASURES

The Minister of Finance announced a package of measures on 18 March 2020, supplemented by additional measures on 20 March 2020, aimed to support the Greek economy in light of the turbulences the COVID-19 pandemic create. These measures -amounting to a total of EUR 3,8 billion- will draw EUR 2 billion from the state budget and an additional EUR 1,8 billion from the Special Purpose European Fund set up to deal with the COVID-19 exceptional circumstances.

Companies will be able to benefit from these measures to the extent they are "directly affected" by the COVID-19 situation. The Minister of Finance issued a decision defining these businesses, which include players active in the tourism, transport, catering, media and entertainment sectors as well as craft-type enterprises and retail businesses. This list will be updated regularly.

More specifically, the package includes the following measures.

1. Business liquidity measures

Repayable advance for business costs

The Greek government committed to supporting business financing in the form of a repayable advance with an extended repayment horizon and a grace period for all businesses directly affected by the COVID-19 situation, aiming to alleviate the burden of wage and non-wage costs. This measure is conditioned upon businesses undertaking commitments not to release any employees for the period affected.

Interest rate payment subsidies

The Greek government will subsidize the interest rate payments for a period of 3 months on business loans for companies active in sectors directly affected by the coronavirus such as tourism, transport or catering. This measure is complimented by the Banks' initiative to suspend payments of business loan debts until 30 September 2020.

Subsidised interest rates for loans from Hellenic Development Bank Funds

The Greek government committed to provide a 100% interest rate subsidy for two years for new loans to enterprises affected by COVID-19 from the Entrepreneurial Fund of the Hellenic Development Bank.

Real estate market intervention

Businesses that shut down following a governmental order will pay only 60% of the rent for their business premises for the months March and April 2020.

2. Tax measures

Suspension of payments of all taxes and levies

The Greek government announced that the payment of all taxes and levies due for the month March 2020 will be suspended until 31 July 2020, including the payment of VAT and social security contributions, for the business activities, "directly affected" by the COVID-19 situation. Within these specific business activities, the measure applies horizontally, without differentiating whether the businesses shut down, fully or partially, in compliance with a governmental order or whether they shut down on their own initiative.

This measure is conditioned upon businesses undertaking commitments not to release any employees for the period affected.

VAT reduction for health products

The VAT is reduced from 6% to 24% until the end of 2020 for all products necessary to address the public health crisis (e.g. masks, gloves, antiseptic liquid / wipes and soap as well as ethyl alcohol used in the manufacturing of such products).

3. Further measures

In addition to the above measures to enterprises, the Greek government committed to an outright payment of EUR 800 to self-employed professionals and freelancers directly affected by the COVID-19 crisis, which is exempt from seizure. The same categories of professionals will be suspended from paying their tax liabilities and social security contributions for the next four months. Further, businesses "directly affected" by this outbreak will be able to suspend the employment contracts of all or part of their staff. The measure can be implemented for one month, with the possibility of extension. The measure is conditioned upon businesses being expressly prohibited from terminating employment contracts.

APPROACH OF THE EUROPEAN COMMISSION

Greece's aid package will need to be cleared by the European Commission before it is implemented, as it amounts to State aid under Article 107(1) of the Treaty on the Functioning of the European Union ("**TFEU**").

The Commission has set out a number of ways in which it will apply and adapt its State aid framework in order to be able to clear aid packages that are put in place by EU governments in response to the coronavirus outbreak.

Special legal framework

The Commission issued a special legal framework for the assessment of coronavirus-related aid measures on 19 March 2020 (see separate briefing). The framework based on Article 107(3)(b) TFEU, permitting the Commission to clear aid for the purpose of remedying "a serious disturbance in the economy" of Member States, refers to allowing, *inter alia*:

- schemes for direct grants, repayable advances or tax advantages up to €800,000 per company (specific rules applies for agricultural, fisheries and aquacultural sectors);
- subsidised State guarantees on bank loans; and
- subsidised interest rates for bank loans.

Other changes

Article 107(2)(b) TFEU allows the Commission to clear aid "to make good the damage caused by natural disasters or exceptional occurrences". In a Communication issued on 13 March, the Commission stated that the coronavirus outbreak qualifies as such an exceptional occurrence and, thus, compensation measures for companies in sectors that have been hit particularly hard, such as transport, tourism and hospitality, will be permissible under this provision.

The Commission also indicated that it is prepared to accept exceptions on its usual requirement that State aid can only be granted to rescue companies if they have not previously been the subject of a State rescue within the last ten years.

Where State aid measures have already been approved by the Commission, EU governments have the possibility to increase the budget of these measures by up to 20% without any involvement of the Commission. For increases of more than 20%, the Commission has established a simplified assessment procedure.

Quick clearance

Under usual circumstances, State aid clearances take several months, if not years. However, in its Communication the Commission announced that approvals for coronavirus-related State aid measures can be granted within days of receiving a state aid notification. For example, when Denmark notified a measure to compensate organisers of large events that have been cancelled due to the virus outbreak, the Commission was able to approve it within 24 hours.

COMMENT

A number of the measures announced by the Greek government, such as subsidised interest rates for loans or tax advantages, could qualify as State aid, so that it can be expected that these would require a prior notification to the

Commission. Consequently, businesses looking to make decisions based on the announced funding should take this possibility into account. Failure to secure prior clearance can lead to aid recipients being required to pay it back and the legal validity of related contractual arrangements being called into question, and, indeed, an expectation from the business that the State has duly secured the clearance, will not shelter it from the negative consequences if the aid measured is found unlawful by the European Commission after it has been implemented.

On a positive note, the Commission is highly experienced in similar crisis situations (e.g. the financial crisis of 2008/2009) and the Commission's first actions demonstrate it is committed to act quickly.

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