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CORONAVIRUS: STATE AID MEASURES TO HELP DUTCH COMPANIES IN NEED

The European Commission has released some details of a new State aid framework that will allow EU governments to put in place support measures to help businesses affected by the coronavirus outbreak. In the Netherlands, the Government has announced a multi-billion euros package of such measures, parts of which will need to be approved by the Commission under its new framework before it can be implemented by the Government.

Key issues

- The European Commission has relaxed the requirements for state aid granted by the EU member states to tackle the economic impact of the Corona crisis.
- The Dutch government has announced a multi- billion euros package of measures to support Dutch businesses, through State-guaranteed loans, grants and other relief.
- Full details of the Dutch package are not clear yet, but it is likely that parts of it cannot be implemented until cleared by the European Commission. The latter has indicated that it will issue clearances much more quickly than usual.
- It is not yet known whether the Commission will require changes to the Dutch plans.

INTRODUCTION

The Coronavirus 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 that are hit by the economic impact. The Netherlands and other member states have already announced several measures in this regard.

DUTCH AID MEASURES

Unprecedented measures have been announced by the Dutch government to help companies in the Netherlands to continue business whilst the markets may further deteriorate. As explained in our recent client briefings, the Dutch government first announced measures on 12 March 2020 (please read our first client briefing on this topic here) and subsequently followed up with additional measures on 17 March 2020 (please read our second client briefing on this topic here). Measures relevant for mid-sized and large Dutch companies include:

- The extension and increase of the existing guarantee scheme for large companies (*Garantie Ondernemingsfinanciering*);
- An increase of the guarantee scheme for mid-sized companies (*Borgstelling MKB-kredieten*);
- A new temporary emergency measure aimed at the retention of work (*Tijdelijke Noodmaatregel Overbrugging voor Werkbehoud*) which will revoke the previously applicable short time working regime and will be shortly available to companies that expect a loss in turnover of at least 20%;

- Extraordinary relief in respect of tax payment obligations for companies; and
- A compensation scheme for certain sectors, such as the hospitality and aviation industries, that suffer large losses of revenue as result of the health measures taken by the Dutch government.

APPROACH OF THE EUROPEAN COMMISSION

Although the details of the Dutch State aid package are not clear yet, it is likely that there are parts that 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 is currently preparing a special legal framework for the assessment of coronavirus-related aid measures and expects it to be in force within the next few days. The framework will be based on Article 107(3)(b) TFEU, which allows the Commission to clear aid for the purpose of remedying "a serious disturbance in the economy" of member states. Full details of the framework are not yet available, but Vice-President Vestager has stated that it will enable EU governments to:

- set up schemes for direct grants (or tax advantages) up to €500,000 per company,
- give subsidised State guarantees on bank loans (both investment and working capital loans). These would have subsidised premiums, with reductions on the estimated market rate for annual premiums for new guarantees for both SMEs and non-SMEs. There will be some limits on the maximum loan amount, which are based on the operating needs of the companies (established on the basis of the wage bills or liquidity needs), but the nature of these limits has not yet been disclosed; and
- enable public and private loans (both investment and working capital loans) with subsidised interest rates. Interest rates must be at least equal to the base rate applicable on 1 January 2020 plus the credit risk premium corresponding to the risk profile of the recipient, with different rates for SMEs and non-SMEs. As is the case for subsidised guarantees, there will be some limits regarding the maximum loan amount, based on the operating needs of the companies.

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 relax 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

Important details of the Dutch aid measures are not available yet but it is highly likely that the Dutch government will have to seek clearance for parts of its aid package, given that a failure to secure prior clearance can lead to aid recipients being required to pay it back, the legal validity of related contractual arrangements being called into question and of course further delays in adequately mitigating the impact of the exceptional circumstances of the coronavirus.

What is equally unclear is whether the Commission will require some changes to the Dutch plans. Consequently, businesses should wait for confirmation of the State aid clearance before making irreversible decisions based on anticipated levels of Government support. 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 shown that it is 'on the ball' in terms of sense of urgency.

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