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## CORRIGENDUM

This document corrects document SWD(2022) 188 final accompanying COM(2022) 337 final of 14.07.2022.

Corrections concern the English language version.

Correction of the date of adoption. The date of adoption should be 14.07.2022, not 13.07.2022.

Text modifications on p.p. 4, 5, 10, 22, 23, 24, 33, 60, 63, 68, 73, 75, 77, 84, 91, 100, 103 and 108.

Modification of footnotes 6 (substitution of link), 54 (substitution of link), 141, 158, 312 and 332.

The text shall read as follows:

## COMMISSION STAFF WORKING DOCUMENT

### *Accompanying the document*

### **REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS**

### **Report on Competition Policy 2021**

{ COM(2022) 337 final }

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## INTRODUCTION

The Report on Competition Policy 2021 and this Staff Working Document provide the second account of the competition policy developments under the Commission led by President von der Leyen. Covering the developments in EU competition policy in 2021, it also is the 51st year the Commission submits such a report.

As the lessons from the most severe pandemic in more than 100 years have shown across the EU, a robust competition policy and its effective enforcement is more important than ever. EU competition policy preserves and strengthens the Single market, benefits consumers, businesses and society alike.

In 2021, EU competition policy continued to play an important role in the EU's efforts to respond to and overcome the health and economic crisis due to the COVID-19 pandemic. The Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (Temporary Framework for State aid measures)<sup>1</sup> enabled necessary and proportionate support by Member States to businesses, especially small and medium-sized enterprises ('SMEs'), in risk because of the pandemic, while limiting negative effects on the internal market. To address the consequences of the current political and economic situation in Europe due to Russia's invasion of Ukraine, the Commission will again use the flexibility of the State-aid policy toolbox, which will enable Member States to tackle the negative economic effects of the new emergency.

Despite the pandemic continuing worldwide, the enforcement of EU competition rules remained at a very high level in 2021. In addition to the 675 COVID-19 related State aid decisions adopted in 2021, the merger control activity remained effective with 396 merger decisions adopted by the Commission. Also in antitrust and cartels the Commission took important enforcement actions to address competition infringements and imposed a total of EUR 1 746 million in fines. The decisions covered numerous sectors such as financial markets, railway transport services, car emissions, food and biofuels. In addition, the Commission closely cooperated and coordinated on related competition issues in the European Competition Network (ECN).

As set out in its *Communication on a Competition Policy fit for new challenges*<sup>2</sup>, the Commission is undertaking an unprecedented review of EU competition policy, covering more than 20 sets of rules with the objective of making sure that EU competition policy instruments remain future-proof and support the EU's green and digital transitions, the recovery process and the response to economic developments and to strengthen the resilience of the Single Market.

In 2021, progress was also made by co-legislators as regards the Commission proposal for the Digital Markets Act and the Regulation on foreign subsidies distorting the internal market. Finally, in the area of merger control, the Commission took measures, such as the acceptance of electronic notifications, to ensure business continuity for companies notifying transactions

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<sup>1</sup> [https://ec.europa.eu/competition-policy/state-aid/coronavirus/temporary-framework\\_fr](https://ec.europa.eu/competition-policy/state-aid/coronavirus/temporary-framework_fr)

<sup>2</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A competition policy fit for new challenges, COM(2021)713, 18.11.2021.

while ensuring compliance with legal obligations and continued to safeguard the implementation of the EU merger rules.

The present Staff Working Document is composed of two parts. The first part presents the main developments in 2021 across the three competition instruments: State aid, antitrust (including cartels) and mergers. In the second part, specific enforcement actions are detailed in a sectoral overview.

## I. MAIN DEVELOPMENTS IN COMPETITION POLICY AND ENFORCEMENT

### 1. ANTITRUST AND CARTELS

#### Articles 101, 102 and 106 TFEU

According to Article 101 TFEU, anti-competitive agreements are prohibited as incompatible with the internal market. Article 101 TFEU prohibits agreements with an anti-competitive object or effects where companies coordinate their behaviour instead of competing independently. However, even if a horizontal or a vertical agreement could be viewed as restrictive it might be allowed under Article 101(3) TFEU if it ultimately fosters competition (for example by promoting technical progress or by improving distribution).

Article 102 TFEU prohibits abuse of a dominant position. It is not in itself illegal for an undertaking to be in a dominant position or to acquire such a position. Dominant undertakings, as any other undertaking in the market, are entitled to compete on the merits. However, Article 102 TFEU prohibits the abusive behaviour by dominant undertakings that, for example, directly or indirectly impose unfair purchase- or selling prices or other unfair trading conditions.

Finally, Article 106 TFEU prevents Member States from enacting or maintaining in force measures contrary to the Treaty rules regarding public undertakings and undertakings to which Member States grant special or exclusive rights.

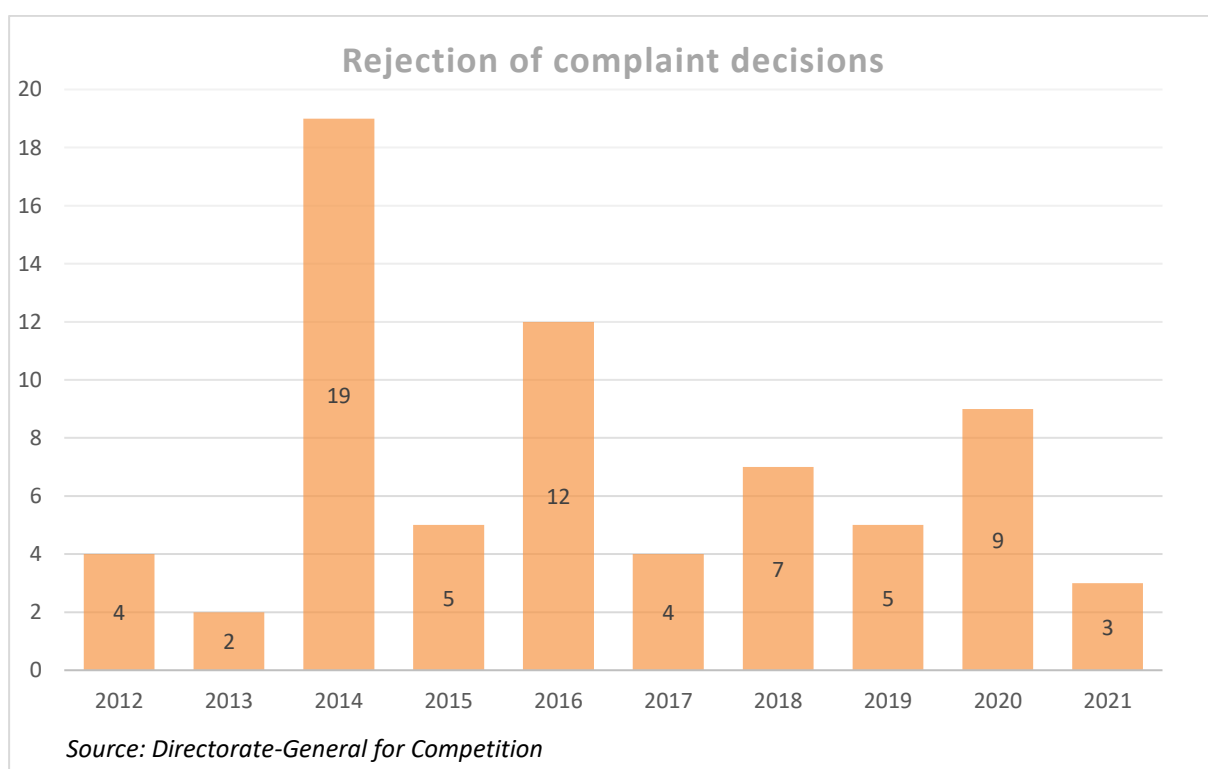
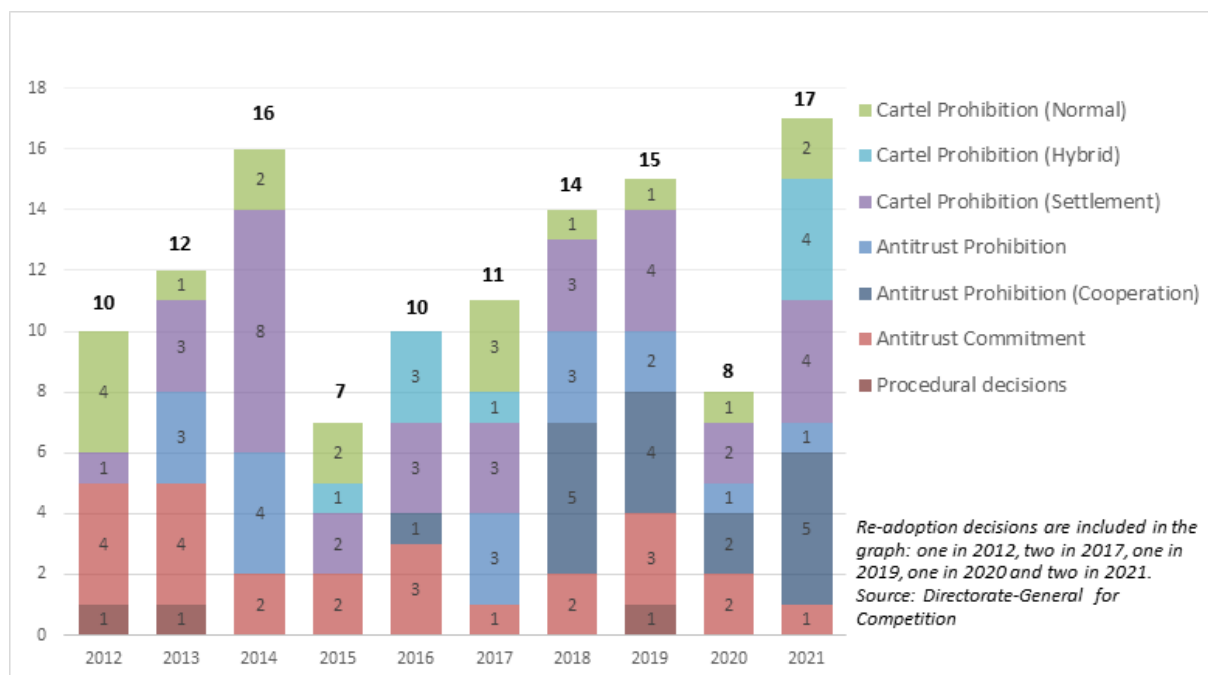
Preserving market discipline to secure the functioning of the Single Market is essential especially in times of crisis. Effective enforcement of the EU competition rules is of vital importance to the digital transformation of the EU economy and to preserve the Single Market's competitiveness and ability to adapt. Antitrust enforcement can contribute in tearing down remaining barriers to the Single Market and eliminating restrictions in the development of clean technologies and the free flow of resources necessary for the circular economy and the European Green Deal's objectives. The present Staff Working Document highlights recent antitrust and cartel decisions, while the graphs below give an overview of antitrust enforcement activity in the past ten years, including also decisions rejecting complaints.

In 2021, the Commission made substantial progress on its ambitious review of competition policy, covering a number of its key block exemption regulations, guidelines and notices. In November 2021, the Commission adopted a Communication on a competition policy fit for new challenges<sup>3</sup>, which underlined the role of competition policy for the post-pandemic economic recovery, for the green and digital transitions and for a resilient Single Market. Alongside enforcement, reforms are crucial to ensure competition policy remains fully effective. In 2021, the Commission advanced on its review agenda encompassing a large number of its key block exemption regulations, guidelines and notices as well as moved forward the work on a number of ongoing initiatives to ensure fair competition in the Single Market.

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<sup>3</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A competition policy fit for new challenges, COM(2021)713, 18.11.2021.

## Antitrust and cartel decisions 2012-2021



### 1.1. Review of antitrust rules and guidance

In 2021, the Commission advanced on its review of antitrust rules and guidance to ensure that they are fit for a changing market environment, including the accelerating digitalisation of the economy and presented a new initiative on the application of competition law to collective agreements for the solo self-employed.

### *1.1.1. COVID-19 pandemic related guidance*

The Temporary Framework for State aid measures for assessing antitrust issues related to business cooperation in response to situations of urgency stemming from the COVID-19 pandemic, adopted in April 2020<sup>4</sup>, introduced the possibility of adopting ad hoc comfort letters, as a temporary tool. These are an exception to the self-assessment rule, and appear in addition to the existing routes for providing guidance in specific situations, as these existing routes cannot address situations of extreme urgency due to their procedural requirements<sup>5</sup>. The Commission clarified that it will use its discretion to decide how and when to provide guidance, but that it is ready to engage and discuss and will ensure that its extensive general guidance reflects today's needs and business realities<sup>6</sup>.

On 25 March 2021, the Commission issued the second comfort letter since the adoption of the Temporary Framework for State aid measures. The letter was issued on the occasion of a pan-European matchmaking event hosted by the Commission. The aim was to address bottlenecks and speed up connections between vaccine producers and service companies (such as contract development and manufacturing organisations, fill and finish equipment producers and others) to improve planning for current and future vaccine production in Europe.

### *1.1.2. Guidance on vertical agreements*

The Commission continued its impact assessment for the revision of the Vertical Block Exemption Regulation (VBER)<sup>7</sup> and the accompanying Guidelines on Vertical Restraints (Vertical Guidelines)<sup>8</sup>, publishing the results of the open public consultation that ended on 26 March 2021 and the summary of the contributions of the National Competition Authorities (NCAs) to the impact assessment of the Vertical Block Exemption Regulation, together with an expert report on 'Active sales restrictions in different distribution models and combinations of distribution models' and an expert report on 'Cases dealing with online sales, and online advertising, restrictions at EU and national level'<sup>9</sup>. On 9 July 2021, the Commission published a draft revised VBER and draft revised Vertical Guidelines for public consultation, together with a background note setting out the proposed changes<sup>10</sup>. This public consultation ended on 17 September 2021. On 22 November 2021, the Commission published the non-confidential

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<sup>4</sup> Communication from the Commission: Temporary Framework for assessing antitrust issues related to business cooperation in response to situations of urgency stemming from the current COVID-19 outbreak, OJ C 116I, 8.4.2020, p. 7. The Temporary Framework lays down the main criteria that the Commission will use when assessing cooperation projects aimed at addressing a shortage of supply of essential products and services during the COVID-19 outbreak. The Temporary Framework is not sector specific, but refers to and builds on experience gained by the Commission in discussions with stakeholders in the health sector.

<sup>5</sup> See Article 10 of Council Regulation (EC) No 1/2003 (Finding of inapplicability) and Commission Notice on informal guidance relating to novel questions concerning Articles 81 and 82 of the EC Treaty that arise in individual cases (guidance letters) (Text with EEA relevance), OJ C 101, 27.4.2004, p. 78-80.

<sup>6</sup> To facilitate contact with the Commission on COVID-19 related antitrust issues, the Commission launched an "Antitrust rules and Coronavirus" webpage providing information and contact details for requests for guidance on specific cooperation projects, available at [https://ec.europa.eu/competition-policy/antitrust/coronavirus\\_en](https://ec.europa.eu/competition-policy/antitrust/coronavirus_en).

<sup>7</sup> Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, OJ L 102, 23.4.2010, p. 1.

<sup>8</sup> Guidelines on Vertical Restraints (Text with EEA relevance), OJ C 130, 19.5.2010, p. 1-46.

<sup>9</sup> See [https://ec.europa.eu/competition-policy/public-consultations/2018-vber\\_en](https://ec.europa.eu/competition-policy/public-consultations/2018-vber_en).

<sup>10</sup> See [https://ec.europa.eu/competition-policy/public-consultations/2021-vber\\_en](https://ec.europa.eu/competition-policy/public-consultations/2021-vber_en).



contributions received from stakeholders on the draft revised rules, as well as a summary of all contributions on the draft rules<sup>11</sup>.

On 28 May 2021, the Commission published the report of the evaluation of the Motor Vehicle Block Exemption Regulation (MVBER)<sup>12</sup> and the accompanying Staff Working Document. Overall, the evaluation concluded that, in the last decade, there have been no material developments that would justify a revamp of the MVBER regime, but that an update was necessary to reflect the importance that access to vehicle-generated data is likely to have as a factor of competition. The Commission is now working on the proposals for the future of the regime in view of the expiration of the regime on 31 May 2023.

### *1.1.3. Guidance on horizontal agreements*

In May 2021, the Commission published the results<sup>13</sup> evaluation of the two horizontal block exemption regulations on Research & Development and specialisation agreements (abbreviated R&D BER and Specialisation BER respectively, together HBERs), together with the Horizontal Guidelines. The aim of this evaluation is to support the Commission decision on whether it should let the HBERs lapse, prolong their duration or revise them.

#### **Key findings from the evaluation of the rules on horizontal agreements**

The evaluation showed that the rules on horizontal agreements remain useful tools for businesses. However, the evaluation identified several areas where the rules are not sufficiently adapted to digitisation and the pursuit of sustainability goals. Some of the provisions in the HBERs are viewed as rigid and complex, while others are considered unclear and difficult to interpret by companies. More specifically, the conditions for exemption in the R&D BER may no longer capture all pro-competitive R&D agreements and the scope of the Specialisation BER may be too narrow. Some provisions in the HBERs and Horizontal Guidelines are also considered unclear or overly strict. Finally, the Horizontal Guidelines offer little guidance on recent market developments such as digitisation and sustainability objectives in horizontal agreements (for example, they do not provide sufficient legal certainty for the self-assessment of agreements pursuing sustainability objectives, data sharing/data pooling agreements, and network sharing agreements).

In July 2021, the Commission launched a public consultation as part of the impact assessment phase of the revision<sup>14</sup>. The Commission aims to have the revised rules in place by 31 December 2022 when the current rules expire.

### *1.1.4. Collective agreements regarding the working conditions of solo self-employed persons*

Digital labour platforms have changed the way people work. They provide access to work, and flexibility, but they can also lead to poor working conditions. For self-employed persons providing services through digital labour platforms, it is not always clear whether EU

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<sup>11</sup> In total, 152 stakeholders and six national competition authorities provided comments on the draft revised VBER and draft revised Vertical Guidelines.

<sup>12</sup> Commission Regulation 461/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector, OJ L 129, 28.5.2010, p. 52.

<sup>13</sup> Commission Staff Working Document - Evaluation of the Horizontal Block Exemption Regulation, SWD (2021) 103, 6.5.2021.

<sup>14</sup> Public consultation - Horizontal agreements between companies, 13.7.2021 to 5.10.2021. See: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13058-Horizontal-agreements-between-companies-revision-of-EU-competition-rules/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13058-Horizontal-agreements-between-companies-revision-of-EU-competition-rules/public-consultation_en)

competition rules allow such self-employed persons to collectively negotiate and conclude agreements on their working conditions.

To address this issue, in June 2020 the Commission had launched a process to assess whether there is a need for measures at EU level to ensure that EU competition law does not stand in the way of collective agreements of self-employed persons aiming to improve their working conditions. The Commission therefore in January 2021 published an inception impact assessment, and in March 2021 consulted all stakeholders on a detailed questionnaire. In April 2021, a dedicated meeting with Social Partners took place. On 9 December 2021, the Commission published draft Guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons<sup>15</sup>.

Based on established case-law of the Court of Justice of the European Union (CJEU)<sup>16</sup>, the draft Guidelines describe situations when solo self-employed persons may be comparable to workers, and clarify that their collective agreements then fall outside the scope of Article 101 TFEU. This covers economically dependent solo self-employed persons, those working side-by-side with workers and those providing their services through digital labour platforms. Furthermore, the draft Guidelines clarify that self-employed persons who may not be comparable to workers, but may nevertheless have difficulties in influencing their working conditions due to an imbalanced bargaining power, may also negotiate collectively without fearing the Commission's intervention. This includes solo self-employed persons who negotiate their working conditions with counterparties of some economic strength; or persons who collectively negotiate in line with the Copyright Directive<sup>17</sup> and national law provisions.

## **1.2. The fight against cartels remains a top priority**

The Commission's strong cartel enforcement record in 2021 shows its continued determination to vigorously fight cartels and to protect the competitive process during the recovery period. In 2021, the Commission adopted 10 decisions and imposed a fines totalling EUR 1746 million. The decisions covered numerous sectors such as financial markets, railway transport services, car emissions, food and biofuels. The Commission was also able to gradually resume its inspection activities that had been temporarily suspended for sanitary and logistic reasons during the earlier phase of the pandemic.

In particular, the Commission had a strong focus on cartels in the financial services in 2021. In April 2021<sup>18</sup>, the Commission adopted a decision against Bank of America Merrill Lynch, Crédit Agricole, Credit Suisse and Deutsche Bank for taking part in a cartel concerning Supra-sovereign, Sovereign and Agency bonds denominated in US Dollars (USD SSA

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<sup>15</sup> Communication from the Commission, Guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons, 9.12.2021 C(2021) 8838 final ANNEX. The draft Guidelines are part of a package of initiatives by the Commission also including a proposal for a Directive on improving working conditions in platform work and a Communication on harnessing the full benefits of digitalisation for the future of work.

<sup>16</sup> Judgment of the Court of Justice of 4.12.2014, C-413/13, *FNV Kunsten Informatie en Media v Staat der Nederlanden*, EU:C:2014:2411; judgment of the Court of Justice of 21.12.1999, C-67/96, *Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie*, EU:C:1999:430.

<sup>17</sup> Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, OJ L 130, 17.5.2019, p. 92–125.

<sup>18</sup> Case AT.40346 *Sovereign and Agency bonds* see, see: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_2004](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2004)

bonds). The Commission imposed fines totalling EUR 28.494 million against these banks, except Deutsche Bank, which revealed the existence of the cartel and received full immunity under the leniency procedure.

In May 2021, the Commission fined Bank of America, Natixis, Nomura, UBS, UniCredit and WestLB (now Portigon)<sup>19</sup> a total of EUR 371 million in respect of a cartel in the primary and secondary market for European Government Bonds (EGB). RBS (now NatWest) was not fined as it received full immunity under the leniency procedure for revealing the cartel.

In December 2021, the Commission concluded the third stage of its investigation into the Foreign Exchange spot trading market<sup>20</sup>. The Commission fined Barclays, RBS HSBC and Credit Suisse a total amount of EUR 344 million (which came on top of the EUR 1.07 billion that had already been imposed in the two earlier Forex cases). UBS was not fined as it received full immunity under the leniency procedure for revealing the existence of the cartels.

Furthermore, in July 2021, the Commission took a decision against five car manufacturers Daimler, BMW, Volkswagen, Audi and Porsche<sup>21</sup>. The Commission imposed fines totalling EUR 875 million against these car manufacturers for restricting technical development in the area of emission cleaning technology for diesel cars. Daimler was not fined because it revealed the existence of the cartel. All companies acknowledged their involvement in the cartel and agreed to settle the case.

In April 2021, in the railway transport services<sup>22</sup>, the Commission sanctioned Österreichische Bundesbahnen (ÖBB), Deutsche Bahn (DB) and Société Nationale des Chemins de fer belges/Nationale Maatschappij der Belgische Spoorwegen (SNCB) for their participation in a customer allocation cartel, which concerned cross-border rail cargo transport services on so-called blocktrains on key EU rail corridors. The three companies admitted their involvement in the cartel and agreed to settle the case. The Commission fined DB and SNCB a total of EUR 48 million, while ÖBB received full immunity.

In the agri-food sector, in November 2021, the Commission fined Conserve Italia Soc. coop. agricola and its subsidiary Conserves France S.A. (together 'Conserve Italia')<sup>23</sup>, totalling EUR 20 million. The decision follows an earlier settlement decision adopted in September 2019 against three other undertakings for participating in the same cartel. Conserve Italia decided not to settle the case and, as a result, the Commission's investigation against Conserve Italia continued under the standard cartel procedure. For more than 13 years, from 2000 to 2013, Conserve Italia and the other cartel participants set prices, agreed on market shares and volume quotas, allocated customers and markets, exchanged commercially sensitive information, and coordinated their replies to tenders.

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<sup>19</sup> Case AT.40324 *European Governments Bonds*, see [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_2565](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2565)

<sup>20</sup> Case AT.40135 *FOREX*, see [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_AT\\_40135](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_AT_40135)

<sup>21</sup> Case AT. 40178 *Car emissions*, see [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_3581](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3581)

<sup>22</sup> Case AT.40330 *Rail cargo*, see [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_1843](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1843)

<sup>23</sup> Case AT.40127 *Canned vegetables*, see [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_6164](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6164)

Finally, in December 2021, the Commission fined Abengoa S.A. and its subsidiary Abengoa Bionenergía S.A.<sup>24</sup>, EUR 20 million for participation in a cartel concerning the wholesale price formation mechanism in the European ethanol market. Biofuels can contribute to promote cleaner transport and reduce greenhouse gas emissions and therefore play a key role in the green transition. The investigation is still ongoing for the other companies concerned.

#### Cartel decisions 2021:

Case name	Adoption date	Fine imposed EUR	Undertakings concerned	Prohibition Procedure
Rail Cargo	20/04/2021	48 594 000	3	Settlement
SSA bonds	28/04/2021	28 494 000	4	Prohibition
EGB	20/05/2021	371 393 000	7	Prohibition
YIRD re-adoption	28/05/2021	6 450 000	1	Prohibition
EIRD re-adoption	28/06/2021	31 739 000	1	Prohibition
Car emissions	08/07/2021	875 189 000	3	Settlement
Canned vegetables	19/11/2021	20 000 000	1	Prohibition
Forex (Sterling lads)	02/12/2021	83 294 000	1	Prohibition
Forex (Sterling lads)	02/12/2021	261 101 000	4	Settlement
Ethanol benchmarks	10/12/2021	20 000 000	1	Settlement
<b>Total</b>		<b>1 746 254 000</b>	<b>26</b>	

### 1.3. Important judgments by the European Union Courts

In 2021, the Union Courts issued a comparatively small number of judgments concerning the Commission's cartel enforcement compared to the situation a few years ago. However, the overwhelming majority of judgments issued fully confirmed the Commission's cartel enforcement practice. This included a confirmation from the CJEU of the Commission's practice of conducting hybrid settlement proceedings. The courts also confirmed that Article 101 TFEU and Article 53 of the EEA Agreement provide the Commission with jurisdiction to review cartels that operate worldwide.

#### 1.3.1. Procedural rights in Commission investigations – staggered hybrid cases

In a judgment concerning the *Steel Abrasives* cartel<sup>25</sup>, the CJEU held that the Commission had not breached a company's defence rights by referring to it in a settlement decision that predated its sanctioning in a decision taken in ordinary procedure (staggered hybrid settlement case). In the CJEU's view, the Commission did not breach the presumption of innocence and the principle of impartiality. The CJEU agreed with the General Court that the Commission had taken "sufficient precautions" in its drafting, stating "unequivocally" that the settlement decision was not addressed to the appellant and that it referred to the company where it was necessary to do so to establish the liability of the other members of the cartel.

<sup>24</sup> Case AT.40054 *Ethanol benchmarks*, see

[https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40054](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40054)

<sup>25</sup> Judgment of the Court of Justice of 18.3.2021, C-440/19 P, *Pometon v Commission*, EU:C:2021:214.

### 1.3.2. *The Commission's jurisdiction*

In two judgments concerning the **Capacitors** cartel<sup>26</sup>, the General Court confirmed the Commission's territorial jurisdiction in the application of Article 101 TFEU and Article 53 of the EEA Agreement. The applicants contested the Commission's territorial jurisdiction, namely on the ground that the anticompetitive conduct was Asia-oriented and was neither implemented nor had a significant effect in the EEA<sup>27</sup> and refuting any relevant link to the EEA<sup>28</sup>.

According to the General Court, the conditions for the territorial application of Article 101 TFEU and Article 53 of the EEA Agreement are satisfied in two situations: in the first place, where the practices covered by that article are implemented in the territory of the internal market, irrespective of the place where they were formed<sup>29</sup> and, in the second place, where it is foreseeable that those practices will have an immediate and substantial effect in the internal market<sup>30</sup>.

The General Court stated that the criterion of the implementation of the cartel is satisfied by, among other things, mere sales within the European Union of the product that is the subject of the cartel, irrespective of the location of the sources of supply and the production plants<sup>31</sup>.

### 1.3.3. *Liability for cartel conduct*

In a judgment concerning the **Power Cables** cartel, the CJEU confirmed the Commission's and the General Court's interpretation of the concept of '*parental liability*' for attributing liability for a company's cartel conduct to its parents<sup>32</sup>.

The CJEU confirmed that the Commission was entitled to rely on the *AKZO* presumption of a parent exercising decisive influence over a subsidiary not only in a situation where it held all or virtually all the capital of the subsidiary, but also where it held all the voting rights associated with its subsidiary's shares<sup>33</sup>. In the same judgment, the CJEU also confirmed that the Commission was right to rely on personal links concerning the board composition of the subsidiary when finding that a parent company exercised decisive influence. Such personal links could indeed be found even in situations where a member of a company's board is connected to another company through 'previous advisory services' or 'consultancy agreements'<sup>34</sup>.

In the **Retail Food Packaging** cartel, the CJEU confirmed settled case law on the presumption of effective exercise of decisive influence of a parent company over its controlled operating

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<sup>26</sup> Judgments of the General Court of 29.9.2021, T-342/18, *Nichicon v Commission*, EU:T:2021:635 and T-363/18, *Nippon Chemi-Con v Commission*, EU:T:2021:638.

<sup>27</sup> Judgment of the General Court of 29.9.2021, T-363/18, *Nippon Chemi-Con v Commission*, para. 71, EU:T:2021:638.

<sup>28</sup> Judgment of the General Court of 29.9.2021, T-342/18, *Nichicon v Commission*, para. 73, EU:T:2021:635.

<sup>29</sup> Judgment of the General Court of 29.9.2021, T-342/18, *Nichicon v Commission*, para. 75, EU:T:2021:635.

<sup>30</sup> Judgment of the General Court of 29.9.2021, T-342/18, *Nichicon v Commission*, para. 77, EU:T:2021:635.

<sup>31</sup> Judgment of the General Court of 29.9.2021, T-342/18, *Nichicon v Commission*, para. 76, EU:T:2021:635.

<sup>32</sup> Judgment of the Court of Justice of 27.1.2021, C-595/18 P, *The Goldman Sachs Group v Commission*, EU:C:2021:73.

<sup>33</sup> Judgment of the Court of Justice of 27.2.2021, Case C-595/18 P, *The Goldman Sachs Group Inc. v European Commission*, paras. 29-42, EU:C:2021:73.

<sup>34</sup> Judgment of the Court of Justice of 27.2.2021, Case C-595/18 P, *The Goldman Sachs Group Inc. v European Commission*, paras. 89-104, EU:C:2021:73.



companies and further confirmed the Commission's cartel enforcement practice in this respect<sup>35</sup>.

#### 1.3.4. Setting of fines

In a judgment concerning the *Steel Abrasives* cartel, the CJEU set aside a part of the General Court's judgment that reduced the original fine from EUR 6.2 million to EUR 3.87 million<sup>36</sup>. In the CJEU's view, the General Court had violated the principle of equal treatment and failed to state proper reasons when it applied a 75% discount under point 37 of the Commission's Guidelines on Fines<sup>37</sup> to the appellant – a discount that was identical to that given to a different company. The CJEU held that the General Court had failed to set out the reasons why, despite that difference in situation, it was consistent with the principle of equal treatment to grant the appellant a rate of reduction identical to that granted to the other company<sup>38</sup>.

In a judgment concerning the *Capacitors* cartel, the General Court confirmed the Commission's decision to increase the fine, since the company had been held liable for a similar infringement in the past<sup>39</sup>. The Commission found that, notwithstanding the fact that that first infringement had been penalised when the infringement found in *Capacitors* cartel was ongoing, it was necessary to apply an increase in the basic amount of the fine on account for repeated infringement, and, consequently, to take into account the entire period of the company's liability for the infringement, including a period of almost nine months preceding the adoption of the original *DRAMs* decision<sup>40</sup>. The General Court considered that the company had already been found to have committed an infringement and that, despite that finding and the penalty imposed, it had continued to participate for almost two years in another similar infringement<sup>41</sup>.

The General Court, in another judgment concerning the *Capacitors* cartel<sup>42</sup>, also confirmed that the Commission did neither infringe the principle of *ne bis in idem*<sup>43</sup> nor the principle of proportionality when applying a deterrence factor of 16% despite there already having been substantial fines imposed in other jurisdictions.

In the *Retail Food Packaging* cartel case, the president of the General Court issued a court order dismissing an application for interim measures seeking the suspension of a Commission decision against CCPL, and ordering it to pay fines of EUR 9.44 million. The Commission had re-imposed a significantly lower fine on CCPL following an earlier successful appeal by the company concerning lack of sufficient reasoning regarding the company's ability to pay the fine. In his court order, the president of the General Court stated that any appeal against

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<sup>35</sup> Judgment of the Court of Justice of 15.4.2021, C-694/19 P, *Italmobiliare SpA and Others v European Commission*, EU:C:2021:286.

<sup>36</sup> Judgment of the General Court of 18. 3.2021, Case C-440/19 P, *Pometon v Commission*, EU:C:2021:214.

<sup>37</sup> Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003, *OJ C 210*, 1.9.2006, p. 2–5.

<sup>38</sup> Judgment of the General Court of 18.3.2021, Case C-440/19 P, *Pometon v Commission*, paras. 145-154, EU:C:2021:214.

<sup>39</sup> Judgment of the General Court of 29.9.2021, T-341/18, *NEC v Commission*, EU:T:2021:634.

<sup>40</sup> Case COMP/38.511 – *DRAMs*.

<sup>41</sup> Judgment of the General Court of 16.12.2004, Case T-341/18, *Carlo De Nicola v European Investment Bank*, EU:T:2004:367.

<sup>42</sup> Judgment of the General Court of 29.9.2021, T-342/18, *Nichicon v Commission*, paras. 512 – 520, EU:T:2021:635.

<sup>43</sup> The principle of *ne bis in idem* refers to the prohibition of double jeopardy. Literally translated *ne bis in idem* means 'not twice about the same'.

the revised Commission decision was unlikely to be successful, as the Commission appeared to have conducted a sufficient analysis of CCPL's financial situation<sup>44</sup>.

#### *1.3.5. Payment of cartel fines*

In the *Commission v Printeos*<sup>45</sup>, concerning the *Envelopes* cartel, the CJEU dismissed the Commission's appeal and upheld the judgment of the General Court, ruling that the Commission is obliged to pay default interest when reimbursing a competition fine provisionally paid by an addressee who contested it, and which is later annulled or decreased by the courts. Printeos was entitled to receive: 1) a default interest from the date the fine was provisionally paid until the date of its repayment to *Printeos* (at ECB refinancing rate plus 2 %); and 2) a compound default interest on the above amount of default interest from the date Printeos lodged its action before the General Court (i.e. ordering payment of interests on an unpaid default interest, at ECB refinancing rate plus 3.5 %).

#### *1.3.6. Application of the Commission's Leniency Notice*

In a judgment concerning the *Car Battery Recycling* cartel, the CJEU confirmed the Commission's and the General Court's interpretation of the Commission's 2006 Leniency Notice<sup>46</sup>. The CJEU held that the concept of 'partial immunity' should apply only to undertakings that adduce evidence concerning new facts previously unknown to the Commission. A mere strengthening of evidence already in the Commission's possession was insufficient for a company to obtain partial immunity<sup>47</sup>.

Along similar lines, the CJEU confirmed in a judgment concerning the *Retail Food Packaging* cartel<sup>48</sup> the Commission's and General Court's position that the appellant in that case did not qualify for immunity under the Commission's 2006 Leniency Notice, as another company first provided the Commission with information enabling it to conduct an unannounced inspection.

In a judgment concerning the *Capacitors* cartel<sup>49</sup>, the General Court confirmed the Commission's practical application of the concept of 'partial immunity'. In this case, the applicant provided the Commission with additional information allowing it to extend the duration of the infringement, and, in return, the Commission granted partial immunity to the applicant for the extended time period, thereby reducing the duration multiplier used for the applicant accordingly. However, the Commission did not reduce the applicant's gravity multiplier. In its judgment, the General Court confirms the Commission's conclusion that the evidence submitted by the applicant had no impact on the gravity of the infringement.

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<sup>44</sup> Order of the President of the General Court of 22.7.2021, T-130/21 R, *CCPL v Commission*; OJ C 391, 27.9.2021, p. 18; the main proceedings are still pending.

<sup>45</sup> Judgment of the Court of Justice of 20.1.2021, C-301/19 P, *Commission v Printeos*, EU:C:2021:39.

<sup>46</sup> Commission Notice on Immunity from fines and reduction of fines in cartel cases (2006/C 298/11), OJ C 298, 8.12.2006, p. 17–22.

<sup>47</sup> Judgment of the Court of Justice of 3.6.2021, C-563/19 P, *Recylex and others v Commission*, EU:C:2021:428, paras. 27–43.

<sup>48</sup> Judgment of the Court of Justice of 15.4.2021, C-694/19 P, *Italmobiliare and others v Commission*, EU:C:2021:286.

<sup>49</sup> Judgment of the General Court of 29.9.2021, Case T-344/18, *Rubycon v Commission*, EU:T:2021:637.

### 1.3.7. Private Enforcement of EU Competition Law

Due to the increase of antitrust damage actions and the application of the Damages Directive, national courts have referred many questions for a preliminary ruling to the CJEU concerning application of the Damages Directive. In 2021, the CJEU rendered its judgments in three of these cases.

#### *On international and territorial jurisdiction*

On 15 July 2021, the CJEU rendered its judgement in case *RH vs Volvo*<sup>50</sup>. Supplementing the 2019 case *Tibor-Trans v. DAF Trucks*<sup>51</sup>, the judgment provided detailed guidance on how to allocate jurisdiction over cartel damages claims under Article 7(2) of the Regulation No 1215/2012<sup>52</sup> Brussels I Recast. A legal or natural person domiciled in a Member State may be sued in another Member State before the courts for the place where the harmful event occurred or may occur. Consequently, in an action for damages caused by an infringement of Article 101 TFEU, the place where the damage occurred is situated in the Member State of the market affected by that infringement in which additional costs were incurred. The CJEU pointed out that two criteria should be applied to identify the competent court in the Member States. First, if the undertaking that has been harmed purchased the goods affected by the collusion exclusively within the jurisdiction of a single court, that court has jurisdiction. Secondly, if purchases were made in several places, each undertaking that has been harmed can bring the action before the court for the place where the claimant has its registered office.

#### *On the notion of undertaking*

In its judgment of 6 October 2021, the CJEU dealt with a question for a preliminary ruling submitted by a Spanish court in case *Sumal*<sup>53</sup>. The judgment clarifies, among other things that, the functional concept of an undertaking is applicable both in the public and the private enforcement of EU competition law. In follow-on actions for damages, a fully-owned subsidiary may be held liable for an infringement of EU competition law of its parent company, on the condition that they form an economic unity. The decisive criterion to identify an economic unity is an uniform behaviour on the market. The CJEU clarified that the delineation of economic unity is based on a two-step test: (i) the economic, organisational and legal links and (ii) the special link between the economic activity of the subsidiary and the subject matter of the parent's infringement. It is on the claimant to prove both links. In light of the functional concept of an undertaking, a parent company can be part of several economic units.

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<sup>50</sup> Judgment of the Court of Justice of 15.7.2021, C-30/20, *RH v Volvo AB*, EU:C:2021:604.

<sup>51</sup> Judgment of the Court of Justice of 29.9.2019, C-451/18, *Tibor-Trans v DAF Trucks*, EU:C:2019:635.

<sup>52</sup> Regulation No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 351, 20.12.2012, p. 1–32.

<sup>53</sup> Judgment of the Court of Justice (Grand Chamber) of 6.10.2021, C-882/19, *Sumal, S.L. v Mercedes Benz Trucks España, S.L.*, EU:C:2021:800.



### *On the jurisdiction of national courts to apply Article 101 TFEU*

On 11 November 2021, the CJEU rendered a judgment in the case *Stichting Cartel Compensation*<sup>54</sup>, confirming that a national court has the power to find an infringement of Article 101 TFEU and to award antitrust damages also for the period when the Commission did not have at its disposal effective powers for the enforcement of EU competition law. The preliminary questions referred to the Court arose in a dispute concerning damage claims in respect of conduct in the air transport sector, that had occurred prior to the application of the rules implementing Article 101 TFEU. At the relevant time the transitional regime of Articles 104 and 105 TFEU applied. In the underlying decision concerning the same conduct (*Airfreight*)<sup>55</sup> the Commission had decided that it could not apply Article 101 TFEU to the conduct for the time period covered by the transitional regime.

#### **1.4. Cooperation within the European Competition Network and with national courts**

##### *1.4.1. Cooperation with national competition authorities within the European Competition Network*

Since 2004, the Commission and the national competition authorities in all EU Member States cooperate through the ECN. The objective of the ECN is to ensure that EU competition law is applied in an effective and coherent manner against companies engaging in business practices that restrict competition in the EU.

In 2021, the Commission continued to ensure the coherent application of Regulation (EC) No 1/2003<sup>56</sup> on the implementation of the rules on competition (Articles 101 and 102 TFEU) through the ECN. Two of the key supporting cooperation mechanisms in this Regulation are the obligation of NCAs to inform the Commission on a new investigation at the stage of the first formal investigative measure and to consult the Commission on envisaged decisions. In 2021, 145 new investigations were launched within the network and 84 envisaged decisions were submitted.

In addition to those cooperation mechanisms set out in Regulation (EC) No 1/2003, other ECN cooperation work streams equally ensure a coherent enforcement of the EU competition rules. The ECN members meet regularly to discuss cases at early stages, policy issues, as well as matters of strategic importance. In 2021, 37 meetings across horizontal working groups and sector-specific sub-groups were organised, where competition authorities' officials exchanged views.

##### *1.4.2. The ECN+ Directive*

The ECN+ Directive<sup>57</sup> empowering Member States' competition authorities to be more effective enforcers of EU competition rules in the field of antitrust entered into force on 4 February 2019. The ECN+ Directive aims to ensure that when applying the same legal

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<sup>54</sup> <https://curia.europa.eu/juris/liste.jsf?lgrec=fr&td=%3BALL&language=en&num=C-819/19&jur=C>.

<sup>55</sup> <https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-03/cp220053en.pdf>.

<sup>56</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, article 11 (3) and (4), OJ L 1, 4.1.2003, p. 1–25.

<sup>57</sup> Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, OJ L 11, 14.1.2019, p. 3–33.

provisions – the EU antitrust rules – national competition authorities have the effective enforcement tools and the resources necessary to detect and sanction companies that infringe Articles 101 and 102 TFEU. It also aims to ensure that they can take their decisions in full independence, based on the facts and the law. The new rules contribute to the objective of a genuine single market, promoting the overall goal of an open, competitive and innovative internal market creating jobs and growth.

Member States had to transpose the Directive into national law by 4 February 2021. On 19 March 2021, the Commission sent Letters of Formal Notice, opening infringement procedures against 22 Member States for non-communicating the transposing measures by the deadline. Of those, 22 Member States, fourteen however notified full transposition of the Directive before the end of 2021. The completeness of their transposing measures will be assessed before the closure of the infringement proceedings. The Commission will then check the conformity of their national transposing measures. The Commission keeps assisting the remaining Member States in the last stages of their transposition processes.

#### *1.4.3. Cooperation with national courts*

In addition to its cooperation with NCAs in the context of the ECN, the Commission also continued its cooperation with national courts. The Commission supports national courts in enforcing the EU competition rules in an effective and coherent manner by providing case-related information or opinions on matters of substance or by intervening as *amicus curiae* in proceedings pending before the national courts.

Following approval from the concerned courts, the Commission publishes its opinions and *amicus curiae* observations on its website.

#### *1.4.4. Private enforcement*

Directive 2014/104/EU on antitrust damages actions (Damages Directive)<sup>58</sup> aims at ensuring that anyone harmed by infringements of the EU competition rules can effectively avail itself of the right to compensation before national courts. As noted in the report about the implementation of the Damages Directive to the European Parliament and the Council of December 2020, since the adoption of the Damages Directive in 2014, the number of damages actions before national courts has increased significantly, and actions for damages have become much more widespread in the EU<sup>59</sup>. A significant number of actions are still follow-on actions, where the person harmed by a competition law infringement claims damages following a final decision of a competition authority.

The Commission continues to monitor the implementation of the Directive by the national courts of the Member States with a view to reviewing the Directive, once sufficient experience from the application of its rules is available.

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<sup>58</sup> Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, OJ L 349, 5.12.2014, p. 1-19.

<sup>59</sup> Commission Staff Working Document on the implementation of Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union SWD(2020) 338 final, 14.12.2020.

## **2. MERGER CONTROL**

### **EU merger control**

The purpose of EU merger control is to ensure that market structures remain competitive while enabling smooth restructuring of the industry. This applies not only to EU-based companies, but also to any company active on the EU markets. Industry restructuring is an important way of fostering efficient allocation of production assets. However, there are also situations where industry consolidation can give rise to harmful effects on competition, taking into account the merging companies' degree of market power and other market features. EU merger control ensures that changes in the market structure which lead to harmful effects on competition do not occur.

EU merger control ensures that all firms active in EU markets can compete on fair and equal terms. Proposed transactions which may distort competition are subject to close scrutiny by the Commission. If necessary to protect competition, the Commission can give merging firms the possibility to dispel competition concerns by offering commitments. If sufficient commitments cannot be found or agreed upon, the Commission may prohibit the transaction. In its assessments, the Commission takes into account efficiencies possibly brought about by mergers. Efficiencies may have positive effects on costs and innovation, for example, provided that they are verifiable, merger-specific and likely to be passed on to consumers.

### **2.1. Recent enforcement trends**

While the COVID-19 pandemic continued throughout 2021, the Commission's enforcement activity remained at a very high level with a total number of 396 merger decisions adopted in 2021 (405 notifications) the highest on record.

Moreover, in 2021 the Commission received 44 reasoned submissions by notifying parties in pre-notification, requesting a referral of a case from the Commission to a national competition authority or vice versa. The Commission accepted to examine two transactions following a referral pursuant to Article 22 of Council Regulation (EC) No 139/2004 (the 'EU Merger Regulation')<sup>60</sup> and referred four transactions pursuant to Article 9 of the EU Merger Regulation to be examined by national competition authorities.

The vast majority of mergers notified in 2021 did not raise competition concerns and were speedily reviewed. The simplified procedure was applied in 78% of all notified transactions under the EU Merger Regulation in 2021.

Nevertheless, in 2021, the Commission's merger enforcement was intensive due to the large number of notified transactions as well as the complexity of a significant number of cases. Moreover, the Commission intervened in fourteen cases. An increasing number of notified transactions concerned already concentrated industries. Reviewing such transactions required the Commission to carefully assess their potential impact on competition, employing sophisticated quantitative techniques and comprehensive qualitative investigative tools.

In 2021, the Commission opened in-depth investigations (the "Phase II") in seven cases. These cases concerned diverse sectors of the economy, including manufacture and retail of

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<sup>60</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, OJ L 24, 29.1.2004, p. 1-22.

container and cargo handling equipment, technical foams and building insulation materials such as mineral wool sandwich panels, semiconductors, the digital sector, healthcare technology, as well as passenger air transport.

In line with the trends of recent years, in 2021 the Commission assessed mergers involving digital issues. For example, the Commission opened an in-depth investigation into the proposed acquisition of Kustomer by Meta (formerly Facebook)<sup>61</sup>, a transaction involving the market for the supply of customer relationship management software. Digital issues were also part of the in-depth investigation of the proposed acquisition of Arm by NVIDIA<sup>62</sup>. Despite the COVID-19 pandemic, the Commission's enforcement activity remained similar to the most recent years. In 2021, the Commission adopted 396 merger decisions<sup>63</sup> and intervened in fourteen cases<sup>64</sup>. Seven mergers were cleared subject to commitments in Phase I and four mergers<sup>65</sup> were cleared subject to commitments following a Phase II investigation. Moreover, three transactions were abandoned and their notifications withdrawn during the in-depth investigation<sup>66</sup>. Finally, the Commission did not prohibit any transactions in 2021.

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<sup>61</sup> Case M.10262 Meta (formerly Facebook)/Kustomer.

<sup>62</sup> Case M.9987 NVIDIA/Arm.

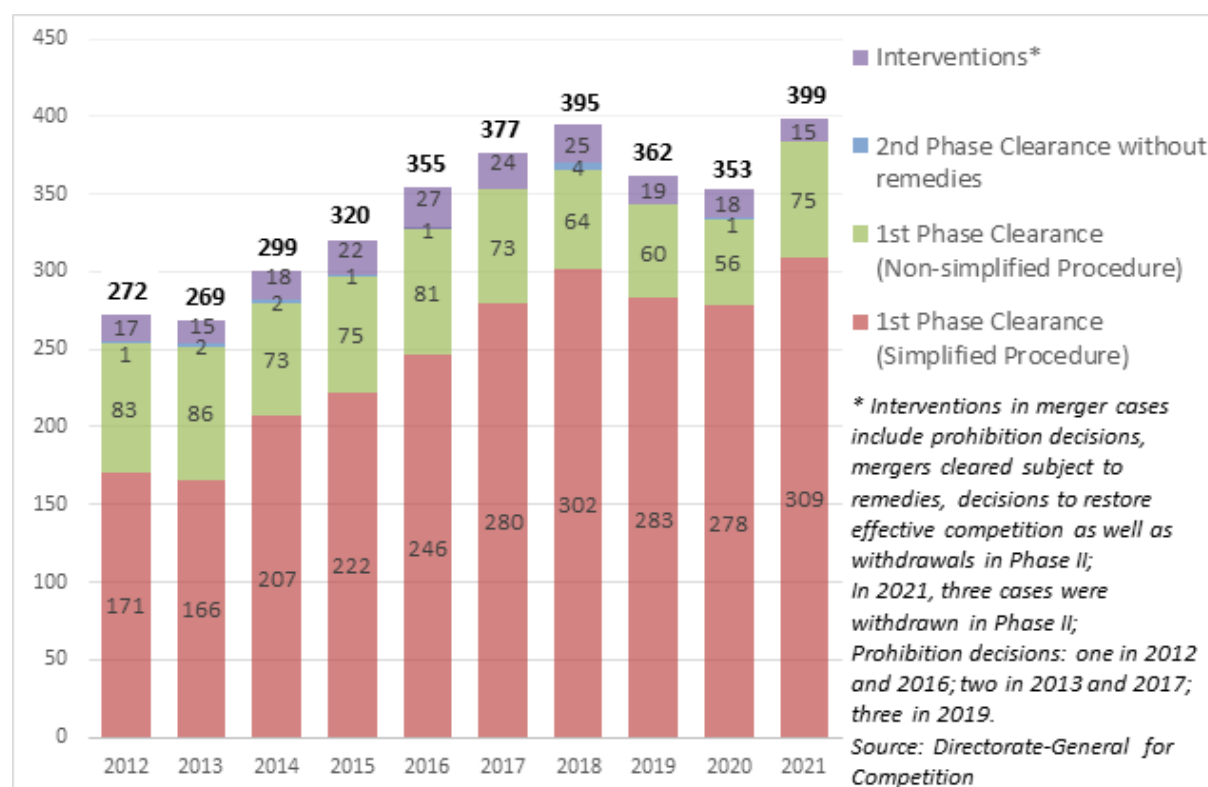
<sup>63</sup> For the purposes of this report, decisions based on Articles 6(1)(a), 6(1)(b), 6(1)(b) in conjunction with 6(2), 8(1), 8(2) and 8(3) of the EU Merger Regulation are considered as final decisions.

<sup>64</sup> That includes 7 cases cleared in Phase I subject to commitments (M.9686 Mitsui/Belchim Crop Protection; M.9945 Siemens Healthineers/Varian Medical Systems; M.9969 Veolia/Suez; M.10047 Schwarz Group/Suez Waste Management Companies; M.10108 S&P Global/IHS Markit; M.10153 Orange/Telekom Romania Communications; M.10249 Derichebourg Environnement/Groupe Ecore Holding), 4 cases cleared in Phase II subject to commitments (M.9564 LSEG/Refinitiv Business; M.9569 EssilorLuxottica/GrandVision; M.9820 Danfoss/Eaton Hydraulics; M.9829 Aon/Willis Tower Watson), and 3 transactions abandoned and their notifications withdrawn in Phase II (M.9162 Fincantieri/Chantiers de l'Atlantique; M.9489 Air Canada/Transat; M.9637 IAG/Air Europa).

<sup>65</sup> Cases M.9564 LSEG/Refinitiv Business; M.9569 EssilorLuxottica/GrandVision; M.9820 Danfoss/Eaton Hydraulics; M.9829 Aon/Willis Tower Watson.

<sup>66</sup> Cases M.9162 Fincantieri/Chantiers de l'Atlantique; M.9489 Air Canada/Transat; M.9637 IAG/Air Europa.

## Merger outcomes 2012-2021



Most remedies accepted by the Commission in 2021 consisted of divestitures of tangible or intangible assets. This confirms the Commission's general preference for structural remedies in merger cases as best suited to address competition concerns arising from a concentration in a durable manner.

Apart from such remedies offered in Phase II investigations, in 2021, the Commission also cleared transactions subject to remedies in Phase I in which the notifying parties offered comprehensive remedy packages in due time, including in some complex transactions such as Schwarz Group/Suez Waste Management Companies in waste management<sup>67</sup>. The Commission also accepted non-divestiture remedies in a few cases, where such measures were considered to effectively solve the identified competition concerns in light of the specificities of the sector and the case at hand, for instance in Siemens Healthineers/Varian Medical Systems in medical imaging and radiotherapy solutions<sup>68</sup>.

Moreover, the Commission adopted a decision pursuant to Article 14 of the EU Merger Regulation imposing fines of EUR 7.5 million on Sigma-Aldrich for providing incorrect or misleading information during the Commission's investigation of Merck's acquisition of Sigma-Aldrich in 2015<sup>69</sup>.

In 2021, following Illumina's early implementation of its acquisition of GRAIL pending the outcome of merger review of the transaction<sup>70</sup>, the Commission adopted interim measures

<sup>67</sup> Case M.10047 - Schwarz Group/Suez Waste Management Companies.

<sup>68</sup> Case M.9945 - Siemens Healthineers/Varian Medical Systems.

<sup>69</sup> Case M.7435 - Merck/Sigma-Aldrich.

<sup>70</sup> Case M.10188 - Illumina/GRAIL.

pursuant to Article 8(5)(a) of the EU Merger Regulation to restore and maintain the conditions of effective competition<sup>71</sup>. It was the first time that the Commission adopted interim measures following the early implementation of a concentration. In parallel, the Commission opened an investigation to assess a possible imposition of a fine for a breach of standstill obligation<sup>72</sup>.

Finally, on 29 October 2021, the Commission announced the opening of an investigation into a possible breach of Article 21 of the EU Merger Regulation<sup>73</sup>, as Hungary imposed a veto on the acquisition of two Hungarian subsidiaries AEGON by VIG, both active in the insurance sector, even though the transaction had already been unconditionally approved by the Commission on 12 August 2021<sup>74</sup>.

## **2.2. Review of merger control rules and guidance**

### *2.2.1. The evaluation of selected procedural and jurisdictional aspects of EU merger control*

In 2021, the Commission finalised and published the results of the evaluation of selected procedural and jurisdictional aspects of EU merger control<sup>75</sup>. Following the evaluation results, the Commission adopted a Communication providing guidance on the application of the referral mechanism set out in Article 22 of the EU Merger Regulation<sup>76</sup> to capture potentially problematic transactions below its turnover thresholds, for instance transactions involving firms that play a significant competitive role despite generating little or no turnover, or transactions involving innovative companies in sectors such as pharmaceuticals.

Following the findings of the evaluation, the Commission also launched an impact assessment on exploring policy options for further simplification of merger procedures, including a potential introduction of electronic notification as the default way of notifying merger transactions. The simplification initiative aims to ease the burden on businesses as well as the Commission.

### *2.2.2. Market definition notice*

Throughout 2021, the Commission continued its review of the Commission Notice on the definition of relevant market for the purposes of Community competition law ('Market Definition Notice')<sup>77</sup>, applied in its antitrust and merger assessments. In July 2021, the Commission published the findings of the evaluation of the Market Definition Notice<sup>78</sup> and started working on a revised Market Definition Notice, in particular, to ensure that it remains

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<sup>71</sup> Case M.10493 - Illumina/GRAIL (Art. 8(5) procedure).

<sup>72</sup> Case M.10483 - Illumina/GRAIL (Art. 14 procedure).

<sup>73</sup> [https://ec.europa.eu/commission/presscorner/detail/en/mex\\_21\\_5664](https://ec.europa.eu/commission/presscorner/detail/en/mex_21_5664).

<sup>74</sup> Case M.10102 - VIG / AEGON CEE.

<sup>75</sup> Commission Staff Working Document, *Evaluation of procedural and jurisdictional aspects of EU merger control*, SWD (2021) 66 final, 26.3.2021, [https://ec.europa.eu/competition/consultations/2021\\_merger\\_control/SWD\\_findings\\_of\\_evaluation.pdf](https://ec.europa.eu/competition/consultations/2021_merger_control/SWD_findings_of_evaluation.pdf).

<sup>76</sup> *Commission Guidance on the application of the referral mechanism set out in Article 22 of the Merger Regulation to certain categories of cases*, C (2021) 1959 final, 26.3.2021, [https://ec.europa.eu/competition/consultations/2021\\_merger\\_control/guidance\\_article\\_22\\_referrals.pdf](https://ec.europa.eu/competition/consultations/2021_merger_control/guidance_article_22_referrals.pdf).

<sup>77</sup> Commission Notice on the definition of relevant market for the purposes of Community competition law, OJ C 372, 9.12.1997, p. 5.

<sup>78</sup> Commission Staff Working Document, *Evaluation of the Commission Notice on the definition of relevant market for the purposes of Community competition law of 9 December 1997*, SWD (2021) 199 final, 12.7.2021, [https://ec.europa.eu/competition-policy/system/files/2021-07/evaluation\\_market-definition-notice\\_en.pdf](https://ec.europa.eu/competition-policy/system/files/2021-07/evaluation_market-definition-notice_en.pdf).



fit for purpose and the digital age. The revision process is ongoing and the Commission will consult stakeholders on the draft of the revised Notice in 2022.

### 2.3. Significant judgments by the Union Courts in merger control

In its judgment of 22 September 2021, the General Court upheld the Commission's decision imposing two fines totalling EUR 124.5 million on the telecommunications operator Altice for gun jumping, while granting Altice a limited reduction of 10% of the amount of the fine applied in relation to the infringement of the notification obligation laid down in Article 4(1) of the Merger Regulation<sup>79</sup>.

In its judgment of 20 October 2021<sup>80</sup>, the General Court upheld two 2017 Commission decisions approving, under the EU Merger Regulation, the acquisition of certain Air Berlin assets by EasyJet and Lufthansa respectively. The General Court upheld the Commission's assessment, notably confirming that the route-by-route assessment traditionally carried out by the Commission in merger cases involving airlines was not warranted in these two cases, since Air Berlin had completely and definitely ceased its operations at the time of the mergers. Furthermore, the General Court found that the analytical framework applied by the Commission under the airport-by-airport approach was sufficiently and adequately explained.

## 3. STATE AID CONTROL

**State aid control** is an integral part of EU competition policy and a necessary safeguard to preserve effective competition and free trade in the Single Market.

The Treaty establishes the principle that State aid which distorts or threatens to distort competition is prohibited in so far as it affects trade between Member States (Article 107(1) TFEU). However, State aid, which contributes to certain well-defined objectives without unduly distorting competition between undertakings and trade between Member States, may be considered compatible with the internal market (for example under Article 107(3) TFEU).

The objectives of the Commission's control of State aid are to ensure that aid is growth-enhancing, efficient and effective, and better targeted in times of budgetary constraints, that aid does not restrict competition but addresses market failures for the benefit of society as a whole. In addition to this, the Commission acts to prevent and recover State aid which is incompatible with the internal market.

The Commission enforces State aid rules to ensure that the support Member State governments grant to companies does not give them an unfair advantage in the Single Market. In 2021, State aid policy continued to play an important role in the crisis response to stabilise the economy and preparing for the path to exit the crisis.

The Temporary Framework for State aid measures adopted at the beginning of the COVID-19 pandemic in 2020, and amended several times, set out the conditions the Commission applies to declare aid compatible. Well-targeted public support helped counter the damage inflicted on healthy undertakings and to preserve the continuity of economic activity. To prepare the exit from the COVID-19 crisis towards a sustainable and resilient recovery of the EU

<sup>79</sup> Judgment of the General Court of 22.9.2021, T-425/18, *Altice Europe v Commission*, EU:T:2021:607.

<sup>80</sup> Judgments of the General Court of 20.10.2021, T-240/18 and T-296/18, *Polskie Linie Lotnicze 'LOT' v Commission*, EU:T:2021:723; EU:T:2021:724.

economy with focus on green and digital transition, DG Competition together with other Commission services assisted Member States in preparing their Recovery and Resilience Plans (RRPs).

However, in 2021 Commission's activity was not limited to crisis response and recovery. The extensive review of the State aid rules and enforcement work continued across all sectors.

With the aim of improving the interplay between EU funding rules and EU State aid rules under the new Multiannual Financial Framework<sup>81</sup>, in July 2021 the Commission adopted an extension of the scope of the General Block Exemption Regulation (GBER)<sup>82</sup>, which streamlined the State aid rules applicable to national funding that fall within the scope of certain recently adopted EU programmes<sup>83</sup>.

In 2021, the Commission adopted revised EU Guidelines on Regional Aid, a revised Communication on short-term export credit insurance (STEC Communication)<sup>84</sup>, the Risk Finance Guidelines, the Communication on State aid rules for Important Projects of Common European Interest ('IPCEI Communication'), endorsed the Guidelines for State aid for climate, environmental protection and energy ('CEEAG'), which were formally adopted in January 2022<sup>85</sup>, and submitted draft Broadband Guidelines for consultation<sup>86</sup>. The review of the sector specific rules and guidance is elaborated further in the second part of the Staff Working Document in the sectoral overview below.

### **3.1. Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak**

On 19 March 2020, the Commission adopted a Temporary Framework for State aid measures to enable Member States to use the full flexibility foreseen under State aid rules to support the economy<sup>87</sup>. The Temporary Framework for State aid measures, which was initially

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<sup>81</sup> See: [https://ec.europa.eu/info/strategy/eu-budget/long-term-eu-budget/2021-2027\\_en](https://ec.europa.eu/info/strategy/eu-budget/long-term-eu-budget/2021-2027_en).

<sup>82</sup> Commission Regulation (EU) 2021/1237 of 23 July 2021 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (Text with EEA relevance), OJ L 270, 29.7.2021, p.39. Public funding that fulfils the conditions of State aid as defined in Article 107(1) of the TFEU must normally be notified to the Commission and approved before it is put into effect, in order to ensure that public spending does not cause unfair competition for companies operating within the EU's internal market. However, Member States are not obliged to notify State aid to the Commission, if the aid in question meets all the relevant criteria set out in the GBER.

<sup>83</sup> The concerned national funds are those relating to: Financing and investment operations supported by the InvestEU Fund; Research, Development and Innovation (RDI) projects having received a "Seal of Excellence" under Horizon 2020 or Horizon Europe, as well as co-funded research and development projects or Teaming actions under Horizon 2020 or Horizon Europe; certain trans-European digital connectivity infrastructure projects funded by or having received a "Seal of Excellence" under the Connecting Europe Facility (Regulation (EU) 2021/1153); European Territorial Cooperation (ETC) projects, also known as Interreg.

<sup>84</sup> Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export credit insurance, OJ C 497, 10.12.2021, pp. 5-13.

<sup>85</sup> Communication from the Commission — Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p. 1-55, See: [EUR-Lex - 52014XC0628\(01\) - RO - EUR-Lex \(europa.eu\)](#).

<sup>86</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_6049](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6049).

<sup>87</sup> Communication from the Commission: Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 91 I, 20.3.2020, p. 1, as amended by Commission Communications C(2020) 2215, OJ C 112I, 4.4.2020, p. 1; C(2020) 3156, OJ C 164, 13.5.2020, p. 3; C(2020) 4509, OJ C 218, 2.7.2020, p. 3; C(2020) 7127, OJ C 340I, 13.10.2020, p. 1 and C(2021) 564, OJ C 34, 1.2.2021, p. 6 and C(2021) 8442, OJ C 473, 24.11.2021, p. 1.



established with an expiry date of 31 December 2020, provides a number of aid measures that the Commission considers compatible under Article 107(3)(b) and Article 107(3)(c) TFEU, such as limited amount of aid, selective tax advantages and State guarantees for loans. The aim of the Temporary Framework for State aid measures is to allow Member States to tackle the difficulties undertakings are currently encountering whilst maintaining the integrity of the EU internal market and ensuring a free and fair competition. The Temporary Framework for State aid measures includes certain requirements related to the green and digital transformation. Large undertakings that have received recapitalisation aid need to report on how the aid received supports their activities in line with EU targets and national obligations related to green and digital transformation, including the EU's 2050 climate neutrality objective.

Furthermore, on the basis of Article 107(2)(b) TFEU, Member States can also compensate undertakings that have suffered damage directly caused by the COVID-19 pandemic (for example in the sectors of transport, tourism, culture, hospitality and retail). Member States can notify such damage compensation measures and the Commission will assess them directly under Article 107(2)(b) TFEU.

### *3.1.1. The Temporary Framework for State aid measures: expansion and prolongation*

Since its adoption, the Temporary Framework for State aid measures has been amended four times in 2020, and twice in 2021, in order to support those sectors of the economy that were most vulnerable to the rules applied in the Member States as a consequence of the pandemic.

On 28 January 2021, the Commission prolonged the availability of all measures set out in the Temporary Framework for State aid measures, including recapitalisation measures, until 31 December 2021, and expanded the scope of the Temporary Framework for State aid measures by increasing the ceilings set out for certain measures and allowing the conversion of certain repayable instruments into direct grants until the end of 2021<sup>88</sup>. On 18 November 2021, the Commission has decided to prolong the Temporary Framework for State aid measures until 30 June 2022, while setting out a path for the progressive phase-out of crisis measures<sup>89</sup>. In order to further support the recovery from the pandemic, the Commission has also decided to introduce two new categories of measures to create direct incentives for future-oriented private investment and solvency support measures, for an additional limited period.

### *3.1.2. Measures authorised in the context of the COVID-19 pandemic*

During 2020-2021, the Commission had taken more than 1180 decisions (among them slightly more than 470 amendment decisions) in all Member States, including those under the Temporary Framework for State aid measures. State support totalling EUR 3.13 trillion to companies affected by the COVID-19 pandemic was assessed. There are a number of

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<sup>88</sup> Communication from the Commission: Fifth Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance C(2021) 564, OJ C 34, 1.2.2021, p. 6-15.

<sup>89</sup> Communication from the Commission Sixth Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance C/2021/8442, OJ C 473, 24.11.2021, p. 1-15.

important caveats for some measures under the Temporary Framework for State aid measures, for which it is not necessary to indicate an amount. Therefore, the amounts included are best estimates based on amounts approved in State aid decisions and other available statistics, for example, mentioned in public communications by national authorities, and in official information communicated by the national authorities.

All State aid approved was considered necessary and proportionate to support businesses and remedy the serious disturbance to the European economy due to the COVID-19 pandemic. At the same time, there were major differences in the amounts approved across Member States, which appears linked to the fiscal space they have as well as the respective size of their economies.

More specifically, 51.7% of State aid approved has been notified by Germany. Italy has notified measures that represent around 15.5% of the entire amount of State aid, while the aid notified by France represents 14.5% of this amount. The aid notified by Spain represents 5.5% of the entire amount of State aid approved, while the aid notified by Poland and Belgium corresponds to around 2.3% and 1.9%, respectively. Aid notified by other Member States is estimated to be between 0.04% and 1.5% of the total EUR 3.13 trillion estimated.

Based on the replies of 26 Member States that responded to the survey<sup>90</sup>, in the period until end of June 2021, of the EUR 3.01 trillion in aid approved by then, around EUR 729 billion was actually used, representing about 5.4% of EU GDP 2019.

The nominal amounts actually provided vary widely across Member States. In absolute terms, according to the data sent by Member States, France has granted more than a fourth of the total aid provided (EUR 188 billion), followed by Italy with 23% (EUR 169 billion), Germany with 19% (EUR 136 billion) and Spain with 14% (EUR 105 billion). In relative terms, Italy has increased the speed of spending in the first half of 2021 becoming the country that has provided to the economy the most as compared to its own GDP<sup>91</sup> (9.4%), followed by Spain (8.4%). France (7.7%), Hungary (6.7%), and Greece (6.1%). Member States that were most affected by the first wave of the pandemic show a general slowdown in the disbursement of funds from December 2020 to June 2021 (France, Germany, the Netherlands and Denmark), with the exception of Italy and Spain that have largely increased their spending in the first half of 2021.<sup>92</sup> The other large increases of COVID-19 related State aid expenditure in 2021 took place in the Member States most hit by later waves (Hungary, Slovenia, Latvia, Czechia, Slovakia, Lithuania and Cyprus).

This emerging picture shows that State aid measures actually implemented by Member States are not disproportionate to the economic damage suffered during the crisis. This is reassuring as it addresses potential concerns as regards the level playing field.

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<sup>90</sup> 26 out of 27 Member States replied to the survey launched in June 2021: Austria did not provide the requested information.

<sup>91</sup> Pre COVID-19 crisis GDP as of 2019.

<sup>92</sup> Bruegel's data collection on Government-guaranteed bank lending: Anderson, J., F. Papadia and N. Véron (2021) 'COVID-19 credit-support programmes in Europe's five largest economies, Working Paper 03/2021, Bruegel.

### 3.2. Facilitating the exit from the pandemic – Recovery and Resilience Facility (RRF)

The Recovery and Resilience Facility (RRF) programme entered into force on 19 February 2021<sup>93</sup>. It finances reforms and investments in Member States from the start of the pandemic in February 2020 until 31 December 2026. The Commission supports the implementation of the first pillar of the Next Generation EU, the RRF. With funding of EUR 672.5 billion, RRF represents by far the largest part of the NextGenerationEU recovery package of over EUR 800 billion<sup>94</sup>. The RRF supports public investments and reforms in the Member States, helping them to address the economic and social impact of the COVID-19 pandemic as well as to facilitate the green and digital transitions.

To receive grants and low-interest loans under the RRF, Member States have submitted Recovery and Resilience Plans (RRPs) for the Commission's assessment before disbursement of any funds. State aid control accompanies and facilitates the implementation of the RRP to ensure that supported investment and reform projects are compatible with State aid rules. Member States will notify to the Commission measures that may entail State aid, and that do not fall under one of the existing General Block Exemption Regulations (GBER, ABER, FIBER) or under an existing authorized scheme. To that end, DG Competition published a Practical guidance to Member States for a swift treatment of State aid notifications in the RRF framework and will continue to provide guidance and templates to the Member States<sup>95</sup>.

### 3.3. State aid for horizontal objectives

Over the years, the architecture of State aid control has evolved. Today, a substantial part of aid is granted under block-exempted schemes which are not examined by the Commission before entering into force. State aid for horizontal objectives generally accounts for the overwhelming majority of all aid.

Already now, the General Block Exemption Regulations (GBER, ABER, FIBER)<sup>96</sup> allow Member States to implement a wide range of public support measures in areas such as research and development, environmental protection, broadband connectivity, regional development or support to SMEs with prior notification if certain conditions are fulfilled. As illustrated by the graphs below, much of horizontal aid falls under the GBER.

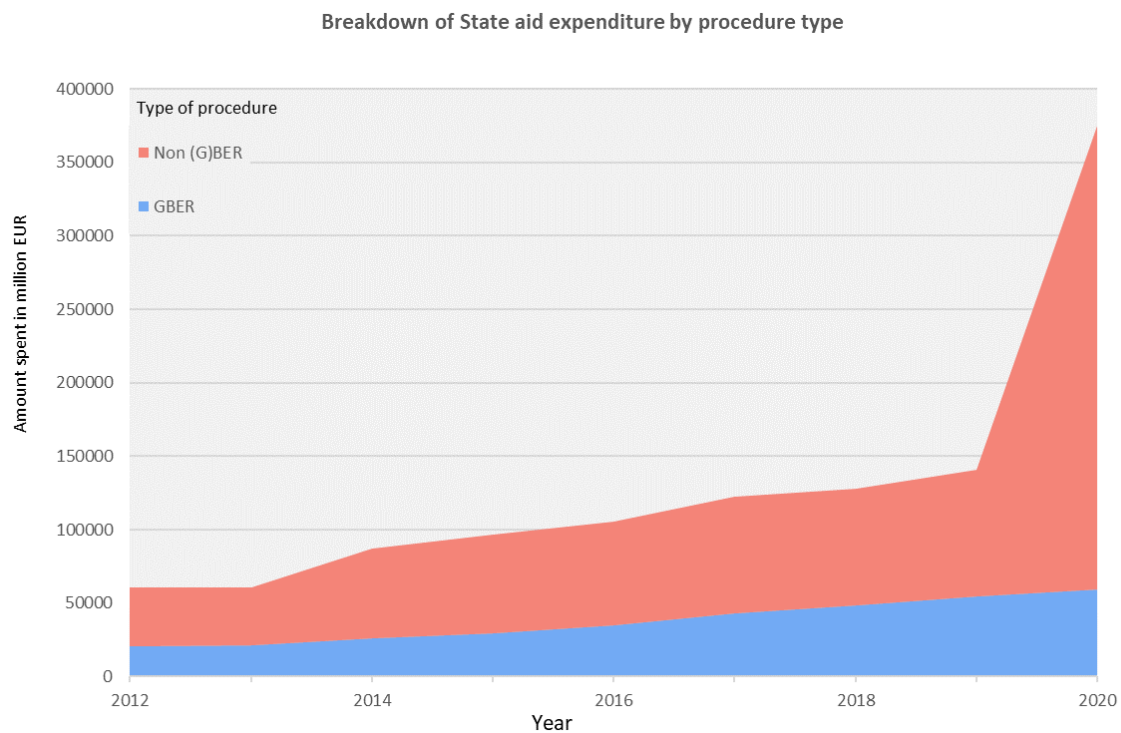
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<sup>93</sup> Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ L 57, 18.2.2021, p. 17–75.

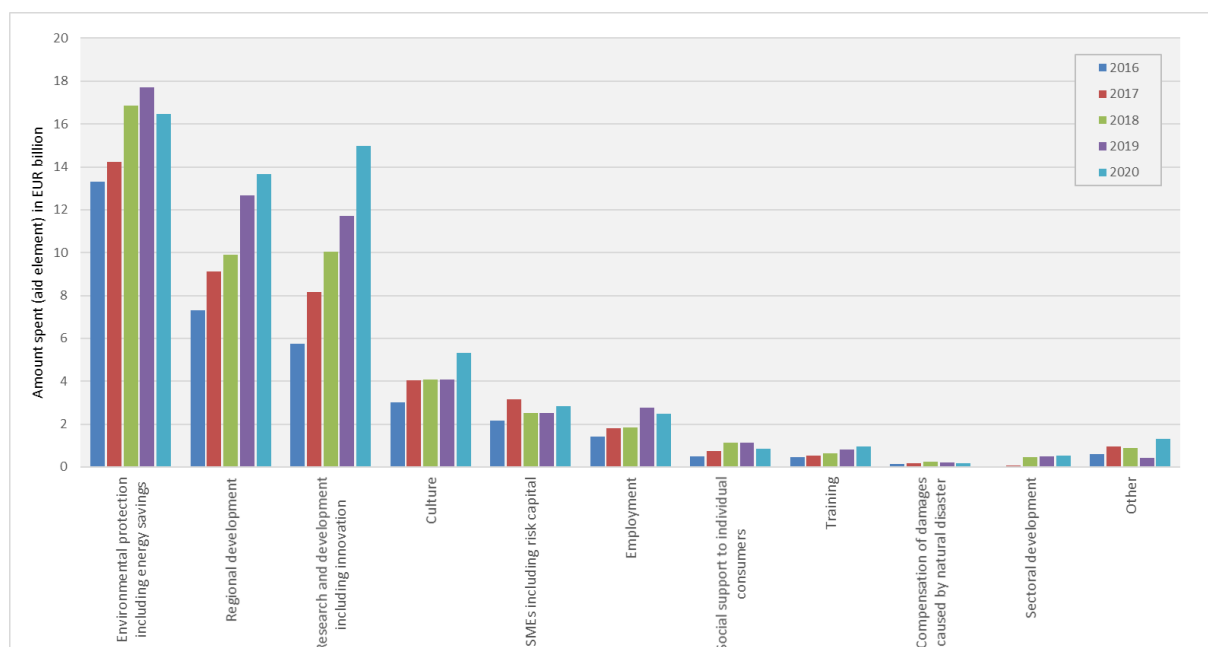
<sup>94</sup> See: NextGenerationEU (europa.eu).

<sup>95</sup> [https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/practical\\_guidance\\_to\\_MS\\_for\\_notifications\\_under\\_RRF.pdf](https://ec.europa.eu/competition/state_aid/what_is_new/practical_guidance_to_MS_for_notifications_under_RRF.pdf).

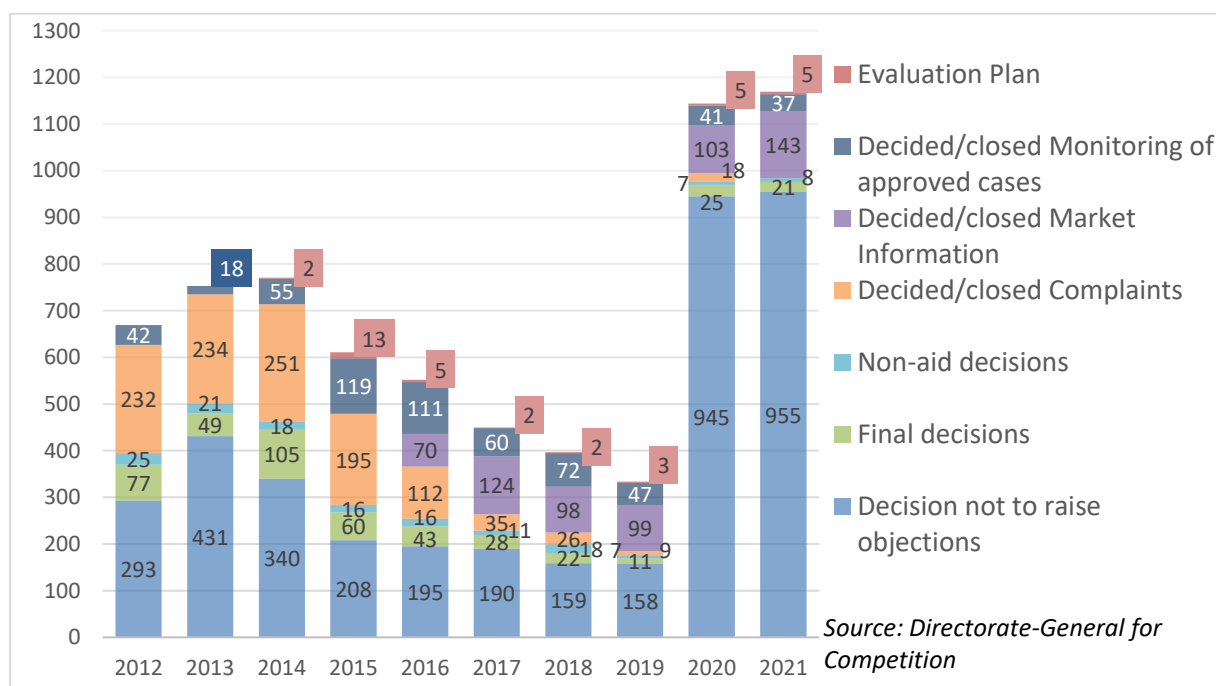
<sup>96</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty; Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union; Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union.



*GBER State aid expenditure by objective in the EU, excluding aid for agriculture, fisheries and railways*



## State aid decisions 2012-2021



### 3.3.1. State aid for climate, environmental protection and energy

In December 2021, the Commission endorsed the new Guidelines on State aid for climate, environmental protection and energy 2022 (CEEAG)<sup>97</sup>, replacing the Guidelines on State aid for environmental protection and energy 2014-2020 (2014 EEAG)<sup>98</sup>. The guidelines, which entered into force upon their adoption on 27 January 2022, follow the announcement of the European Green Deal<sup>99</sup> and adoption of the European Climate law<sup>100</sup>. The CEEAG create a flexible, fit-for-purpose enabling framework to help Member States provide the necessary support to achieve the European Green Deal objectives in a targeted and cost-effective manner. Further details can be found in Section II 1.1 below.

### 3.3.2. State aid for research, development and innovation

To achieve the greatest possible impact with available budgets, State aid for research, development and innovation (RDI) should not replace or crowd out private financing. To the contrary, public funding should leverage more private investments. RDI aid can help where market forces alone do not deliver the necessary investments in promising but high-risk

<sup>97</sup> Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022, OJ C 80, 18.2.2022, p. 1-89.

<sup>98</sup> Communication from the Commission — Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p. 1-55

<sup>99</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal, COM(2019) 640 final.

<sup>100</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'), OJ L 243, 9.7.2021, p. 1-17.

innovative projects.

In 2021, the Commission continued to ensure that aid schemes and individual measures notified or pre-notified under the RDI State aid rules were well targeted to projects enabling ground-breaking research and innovation. The Commission's State aid control in the field of RDI covered a variety of sectors including novel technologies for the decarbonisation of industrial production processes, for electric and connected mobility, for digital solutions in process innovations, as well as research and technology infrastructures, innovation clusters and high power computing, with a focus on support for the development of new clean and digital technologies supporting Europe's green and digital transition.

Following the State Aid Modernisation in 2014<sup>101</sup>, total RDI State aid expenditure under the GBER as well as the RDI Framework rose from EUR 8.9 billion in 2014 to almost EUR 14 billion in 2019, with EUR 12.8 billion disbursed under the GBER alone.

The GBER was amended in 2021 to introduce provisions to facilitate and simplify State aid assessments for RDI projects by combining funding from the Horizon Europe programme with national funds.

Following the fitness check, the Commission continued work on revising the State aid rules for RDI. The objective is to ensure that the revised State aid rules for RDI are fit for purpose taking into account the market and technological evolution as well as the specific objectives of the twin transition to a green and digital economy as well as the EU research and innovation policy.

### *3.3.3. Aid enabling Member States jointly to support important projects of common European interest*

Until the end of 2021, the Commission assessed proposed State aid for the execution of Important Projects of Common European Interest (IPCEI) based on the compatibility criteria set out in a dedicated Communication<sup>102</sup> adopted in 2014. In order to be deemed compatible under these rules, eligible projects must address an important market failure or other important systemic failures and (i) significantly contribute to strategic EU objectives; (ii) involve several Member States; (iii) involve private financing by the beneficiaries; (iv) generate positive spill over effects across the EU and (v) limit distortions to competition.

In January 2021, in line with the Commission's battery alliance initiative<sup>103</sup>, the second set of batteries IPCEI, for developing innovative technologies for e-mobility and storage, jointly notified by 12 Member States, was approved by the Commission<sup>104</sup>.

In addition, in line with the updated Industrial Strategy Communication, discussions with Member States and industry on possible new IPCEIs in the areas of hydrogen technologies

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<sup>101</sup> [State aid: Commission turns state aid modernisation into action and calls for better cooperation with Member States to boost growth \(europa.eu\)](#)

<sup>102</sup> Communication from the Commission — Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest OJ C 188, 20.6.2014, p. 4–12.

<sup>103</sup> Strategic Action Plan on Batteries, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Europe on the Move, 17.5.2018, COM(2018) 293 final Annex 2.

<sup>104</sup> See: [State aid: Commission approves aid in battery value chain \(europa.eu\)](#).

and systems, cloud infrastructure and services, microelectronics & connectivity and health have intensified in 2021. Concrete projects for two hydrogen IPCEIs (technology and industry) emerged in the second half of 2021, and just before the end of the year, a number of projects that will form part of an eventual new IPCEI in microelectronics and connectivity emerged as well. Not all of these projects have been notified to the Commission yet, but in all the areas mentioned above IPCEI are expected to emerge in the course of 2022. These can contribute to increasing the resilience of the EU and addressing strategic dependencies.

In 2021, the Commission finalised the revision of the IPCEI Communication following the fitness check of the State aid package. The new revised IPCEI Communication was adopted by the Commission in November 2021 and will apply from January 2022<sup>105</sup>.

The revised IPCEI Communication requires that at least four Member States participate, further incentivises and encourages the participation of SMEs in IPCEIs, clarifies the notion of first industrial deployment and introduces the ‘do no significant harm’ principle into the assessment framework. It states that IPCEIs can contribute to sustainable economic growth, jobs, competitiveness and resilience for industry and the economy in the Union and strengthen its open strategic autonomy.

#### *3.3.4. Regional aid*

In April 2021, the Commission adopted revised Regional Aid Guidelines that entered into force on 1 January 2022<sup>106</sup>. It is for the Member States to notify their future regional aid maps, which are subject to individual decisions by the Commission. By 31 December 2021, the Commission had adopted a new regional aid map for almost half of the Member States.

The Regional Aid Guidelines were the first set of State aid rules to be revised following the announcement of the European Green Deal and the European Industrial and Digital Strategies. The revised rules include a number of targeted adjustments to simplify and reflect experience gained from the application of the previous rules, as well as to take into account those new policy priorities.

In 2021, the Commission also adopted several regional aid decisions authorising regional investment aid for SKBM’s investment project<sup>107</sup> for a new battery cell plant in Hungary and also approving the one-year extension of two operating aid schemes in outermost regions<sup>108</sup>. The Commission has further approved the prolongation of the French fiscal aid scheme to support productive investments in the French outermost regions until 2027<sup>109</sup>, and the extension of a scheme supporting social housing in Saint Martin<sup>110</sup> until 2025. The

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<sup>105</sup> State aid: Commission adopts revised State aid rules, available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_6245](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6245).

<sup>106</sup> State aid: Commission adopts revised Regional Aid Guidelines, available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_1825](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1825).

<sup>107</sup> Case SA.58633 LIP – regional investment aid to SKBM Hungary. See: [SA\\_58633\\_B00B247D-0000-C867-BF2A-DDFCB1574EA8\\_146\\_1.pdf \(europa.eu\)](#).

<sup>108</sup> Cases SA.60766 - Reduced rate of excise duty applied to rum and liqueurs produced and consumed in Madeira for the period 1.1.2021-31.12.2021 (prolongation of scheme SA.38823); SA.60288 - Prolongation of Octroi de mer scheme SA.46899 until June 2021; SA.63693 - Operating aid scheme for outermost regions providing reductions on the Octroi de Mer Tax.

<sup>109</sup> Case SA.60282 - Aide fiscale à l'investissement productif outre-mer (défiscalisation).

<sup>110</sup> Case SA.62675 - Aide fiscale à l'investissement en faveur du logement social à Saint-Martin.



Commission also approved a plan to evaluate a large block exempted Greek scheme<sup>111</sup>.

### *3.3.5. Aid for financial institutions*

In 2021, the Commission authorised the prolongation of existing schemes for banks to continue supporting the resilience of the sector, without the need of granting new aid to individual financial institutions. In particular, the Commission authorised the prolongation of schemes for the restructuring or orderly market exit of entities in distress, in Poland<sup>112</sup>, Ireland<sup>113</sup> and Denmark<sup>114</sup>, and for addressing potential liquidity challenges for banks in Greece<sup>115</sup>. In addition, the Commission allowed the prolongation of guarantee schemes for the securitisation of non-performing loans (NPLs) in Greece (“Hercules”<sup>116</sup>) and Italy (“GACS”<sup>117</sup>), continuing to help banks clean up their balance sheets without granting aid or distorting competition.

During the year, the Commission authorised indirect aid to financial institutions in schemes primarily targeted at providing social support to vulnerable households at risk of losing their home in Cyprus<sup>118</sup> and Greece<sup>119</sup>. In addition, the Commission authorised Member States to support young small and medium-sized enterprises (SMEs) and start-ups typically suffering from limited access to finance. In this respect, the Commission approved a modification of the existing risk finance scheme in France<sup>120</sup>. It approved a pricing methodology for market-conform guarantees to be provided by Banco Português de Fomento, a Portuguese development bank<sup>121</sup>, and a EUR 11.2 million capital increase for the Fund Manager of Financial Instruments in Bulgaria (FMFIB)<sup>122</sup>, which manages the financial instruments co-financed by the European Structural and Investment Funds. Finally, the Commission updated some State aid rules related to financial instruments, in line with the Commission’s current policy priorities, in particular the General Block Exemption Regulation (GBER)<sup>123</sup>, the Short-Term Export Credit (STEC) Communication<sup>124</sup> and the Risk Finance Guidelines (RFG)<sup>125</sup>.

### *3.3.6. Aid supporting fixed and mobile broadband deployment and take-up*

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<sup>111</sup> Case SA.61580 - Inclusion of the Small and Micro Enterprises Scheme under the approved evaluation plan for the General Entrepreneurship Scheme.

<sup>112</sup> Case SA.63002, OJ C 285, 16.7.2021, p.1; Case SA.64522, OJ C 487, 3.12.2021, p.1.

<sup>113</sup> Case SA.62303, OJ C 240, 18.6.2021, p.1; Case SA.100030, OJ C 487, 3.12.2021, p.1; and Case SA.62649, OJ C 240, 18.6.2021, p.1.

<sup>114</sup> Case SA.58478, OJ C 60, 19.2.2021, p.1.

<sup>115</sup> Case SA.59030, OJ C 144, 23.4.2021, p.1.

<sup>116</sup> Case SA.62242, OJ C 214, 4.6.2021, p.1.

<sup>117</sup> Case SA.62880, OJ C 295, 23.7.2021, p.1.

<sup>118</sup> Case SA.63005, OJ C 366, 10.9.2021, p.1.

<sup>119</sup> Case SA.100197. The official version of the decision is not yet published. See: [https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=1,2,3](https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1,2,3).

<sup>120</sup> Case SA.59985, OJ C 195, 21.5.2021, p.1.

<sup>121</sup> Case SA.61340, OJ C 327, 13.8.2021, p.1.

<sup>122</sup> Case SA.61100. The official version of the decision is not yet published. See: [https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=1,2,3](https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1,2,3).

<sup>123</sup> Commission Regulation (EU) 2021/1237 of 23 July 2021 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (Text with EEA relevance), OJ L 270, 29.7.2021, pp.39-75.

<sup>124</sup> Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export credit insurance, OJ C 497, 10.12.2021, pp.5-13.

<sup>125</sup> Communication from the Commission: Guidelines on State aid to promote risk finance investments, OJ C 508, 16.12.2021, pp. 1–36.



The number of measures concerning support to the deployment of mobile networks continued to increase in 2021, with the adoption of a EUR 2.1 billion federal German scheme, a regional mobile scheme in Lower-Saxony, a Spanish scheme to support the deployment of passive infrastructure for the provision of mobile communication services in areas without 4G mobile coverage<sup>126</sup> and a Galician measure supporting rural mobile deployment<sup>127</sup>. The Commission also approved several decisions concerning fixed broadband, notably a Spanish measure roll out networks providing at least 300 Mbps symmetrical speeds, upgradeable to 1 Gbps symmetrical<sup>128</sup>, in areas with no more than one next generation access network and where available download connectivity was below 100 Mbps. The Commission also adopted the prolongation of a Croatian scheme for the development of NGA networks<sup>129</sup>. The Commission also approved a EUR 610 million Italian voucher scheme to facilitate the access of SMEs<sup>130</sup> to high-speed broadband services, as well as a measure supporting the connection of Italian schools<sup>131</sup>.

### *3.3.7. Aid strengthening the resilience of the EU semiconductors ecosystem*

The State aid rules also provide a number of possibilities to strengthen the resilience of the EU semiconductors ecosystem. In its Communication on a Competition Policy fit for new challenges of 18 November 2021<sup>132</sup>, the Commission identified the global semiconductor shortage and the EU's dependency on supply from a limited number of companies in a changing geopolitical context as a challenge for the Union. Against this specific background, the Communication specified that it may envisage approving support to fill potential funding gaps for the establishment in particular of European “first-of-a-kind” facilities in the semiconductor ecosystem based on Article 107(3)(c) TFEU. This legal basis allows the Commission to approve aid to facilitate the development of certain economic activities or of certain economic areas to be compatible with State aid rules, where it does not adversely affect trading conditions to an extent contrary to the common interest. In order to make sure that the overall balance of effects of such aid is positive, aid will be subject to strong competition safeguards as well as ensuring that benefits are shared widely and without discrimination across the European economy. On 8 February 2022, the Commission further clarified relevant concepts in its Communication on a Chips Act for Europe<sup>133</sup>.

### *3.3.8. Infrastructure support measures*

The Commission approved several support measures for infrastructure projects. In January 2021, the Commission approved Greek public funding for the construction and operation of the North section of the E65 Motorway<sup>134</sup>. In March 2021, the Commission approved State aid for the reconstruction of Parc Exposition Hall 3 Le Bourget in Paris, in the context of the

<sup>126</sup> SA.64394 RRF - Spain- National aid scheme for passive infrastructure for mobile networks.

<sup>127</sup> SA.57216 Mobile coverage in rural areas in Galicia-Spain.

<sup>128</sup> SA.62696 ( 2021/N ) RRF - Extension of Broadband Scheme for NGA White and Grey Areas.

<sup>129</sup> SA.100662 RRF-Croatia-National Broadband Plan.

<sup>130</sup> SA.57496 Broadband vouchers for SMEs – Italy.

<sup>131</sup> SA.57497 ( 2020/N ) Broadband infrastructure roll-out to connect schools – IT.

<sup>132</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A competition policy fit for new challenges, COM(2021)713, 18.11.2021.

<sup>133</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A Chips Act For Europe, COM(2022)45 and related proposals, 8.2.2022.

<sup>134</sup> SA.54273 - E65 Motorway Concession - Trikala-Egnatia (North section).

2024 Olympic and Paralympic Games<sup>135</sup>. In July 2021, the Commission approved State aid for the construction of a carbon capture and utilisation facility in Hengelo (Netherlands)<sup>136</sup>. In December 2021, the Commission approved the amendment of a German measure to encourage the shift from road to railway in the Land of Saxony-Anhalt<sup>137</sup>.

### *3.3.9. Evaluation of aid schemes by Member States*

The State Aid Modernisation (SAM) introduced the requirement for Member States to evaluate certain aid schemes. The aim is to gather the necessary evidence to better identify the impact, positive and negative, of the State aid and to provide input for future policy-making by the Member States and the Commission. Since 1 July 2014, evaluation is required for large GBER schemes in certain aid categories<sup>138</sup> as well as for a selection of notified schemes under the new generation of State aid guidelines<sup>139</sup>.

By the end of 2021, the Commission had approved evaluation plans covering 76 State aid schemes. Twelve additional schemes are currently under analysis, covering a total of 17 Member States<sup>140</sup> and the United Kingdom. Most of these decisions concerned either large regional aid projects or Research, Development and Innovation (RDI) aid schemes under GBER or notified energy and broadband schemes. In total, these schemes account for over EUR 62 billion in annual State aid budget. By the end of 2021, the Member States had delivered to the Commission 27 interim and 33 final evaluation reports. They were assessed by the Commission services and considered to be of average to good quality<sup>141</sup>.

In 2021, the Commission proposed a partial restructuring of the evaluation requirement, which would take into account the experience gained in previous years as well as the 2020 fitness check and fact-finding study. The revised version of the evaluation requirement features already in the newly approved guidelines on Regional aid, Risk Finance and ETS.

Due to the COVID-19 pandemic, in 2021 the Commission did not organise any workshop with Member State representatives and evaluation experts as in previous years. The Commission expects to resume the annual meetings in 2022. The current priority of the Commission is to comprehensively assess evaluation reports, both intermediate and final ones, in order to: (i.) give appropriate feedback to Member States, (ii.) make sure that results are used for better policy-making, and (iii.) provide evidence to assist Member States when reflecting on future legal developments.

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<sup>135</sup> SA.61094 - Aide à l'investissement pour la reconstruction du hall 3 du parc des expositions du Bourget en vue des jeux olympiques et paralympiques 2024.

<sup>136</sup> SA.61295 – Aid to Twence for investment in CO2 capture technology.

<sup>137</sup> SA.63202 - Modification of SA.54102 Scheme to promote investment to strengthen rail freight transport in Saxony-Anhalt.

<sup>138</sup> Schemes with an average annual State aid budget above EUR 150 million in the fields of regional aid, aid for SMEs and access to finance, aid for research and development and innovation, energy and environmental aid and aid for broadband infrastructures.

<sup>139</sup> Evaluation can apply to notified aid schemes with large budgets, containing novel characteristics or when significant market, technology or regulatory changes are foreseen.

<sup>140</sup> Austria, Croatia, Czechia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Poland, Portugal, Romania, Slovakia, Spain, and Sweden.

<sup>141</sup> All the submitted evaluation reports are reviewed by the JRC within the framework of the Administrative Arrangement established between DG Competition and the JRC on the: "Support to the quality assessment of evaluation reports in the area of State Aid, 2018-2020". The JRC has continued to support DG Competition under the new Administrative Arrangement for the "Support to the quality assessment of evaluation plans and reports in the area of State Aid, 2021-2023 (EVALSA II)".

## **1.4. Strengthening the Commission toolbox – a new policy initiative redressing distortive foreign subsidies**

In May 2021, the European Commission adopted a [proposal for a Regulation on foreign subsidies distorting the internal market](#)<sup>142</sup>, accompanied by an Impact Assessment report<sup>143</sup>. The legislative proposal follows the publication of a [White Paper](#) in June 2020<sup>144</sup> and an extensive consultation process with stakeholders.

The proposal aims at closing a regulatory gap. Subsidies granted by third countries currently go largely unchecked, while aid granted by EU Member States is subject to EU State aid rules. The proposed new tool is designed to tackle foreign subsidies that cause distortions and harm competition in the internal market. The proposed Regulation will allow the Commission to investigate foreign subsidies and redress their distortive effects in any market situation, but with a specific focus on concentrations and public procurement procedures.

The proposal includes three tools: i.) proposed concentrations where the target company has an EU turnover of at least EUR 500 million and the foreign financial contribution exceeds EUR 50 million, would have to be notified to the Commission; ii.) bids in EU public procurement procedures involving foreign financial contributions where the value of the procurement is at least EUR 250 million would have to be notified to the Commission; and iii.) the Commission would be empowered to investigate ex-officio other market situations, including smaller concentrations and smaller public procurement procedures.

The Commission would have exclusive competence to enforce the Regulation. When the negative effects of the foreign subsidy outweigh its positive effects, the Commission will have the power to impose redressive measures or accept commitments to remedy the distortion. Such measures and commitments include a range of structural or behavioural remedies, such as the divestment of certain assets or the prohibition of a certain market behaviour. The Commission will also have the power to prohibit a subsidised concentration or the award of a public procurement contract to a subsidised bidder. The Commission's proposal is subject to the ordinary legislative procedure by the co-legislators, the Council and in Parliament.

## **3.5. Monitoring, recovery and cooperation with national courts**

### *3.5.1 Increased monitoring of existing State aid to ensure competition on fair and equal terms*

Pursuant to the most recent figures available<sup>145</sup>, 95.5% of the new State aid measures implemented in 2020 are covered by GBER and, among all the State aid measures active in the same year, 86.1% are GBER measures. These figures show that it is essential for the Commission to verify that Member States apply State aid schemes correctly and that they only grant aid when all required conditions are met. Therefore, monitoring is the counterweight to 'self-assessment' by Member States resulting from the exemption from the notification obligation (for example the GBER) and also a necessary complement of the approval of State aid schemes by the Commission.

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<sup>142</sup> See: [https://ec.europa.eu/competition-policy/international/foreign-subsidies\\_en](https://ec.europa.eu/competition-policy/international/foreign-subsidies_en).

<sup>143</sup> See: [https://ec.europa.eu/competition/international/overview/impact\\_assessment\\_report.pdf](https://ec.europa.eu/competition/international/overview/impact_assessment_report.pdf).

<sup>144</sup> See: [https://ec.europa.eu/competition-policy/system/files/2021-06/foreign\\_subsidies\\_white\\_paper\\_en.pdf](https://ec.europa.eu/competition-policy/system/files/2021-06/foreign_subsidies_white_paper_en.pdf).

<sup>145</sup> See the State Aid Scoreboard 2020, available at [https://ec.europa.eu/competition-policy/state-aid/scoreboard\\_en](https://ec.europa.eu/competition-policy/state-aid/scoreboard_en).

### 3.5.2 Restoring competition by recovering of State aid granted in breach of the rules

To ensure the integrity of the internal market, Member States must take all necessary measures to recover unlawful and incompatible aid. The purpose of recovery is to restore the situation that existed on the internal market prior to the granting of the aid. This is necessary to ensure that competition in the Single Market can take place on fair and equal terms.

In 2021 the Commission continued its efforts to ensure that recovery decisions are enforced effectively and immediately. The Commission adopted five new recovery decisions, totaling an estimated EUR 1.2 billion to be recovered by the Member States concerned<sup>146</sup>. As of the end of December, the Commission had 53 recovery cases pending<sup>147</sup>.

By 31 December 2021, the sum of unlawful and incompatible aid recovered from beneficiaries amounted to EUR 29.4 billion<sup>148</sup>. At the same point in time, the outstanding amount pending recovery was EUR 7.6 billion.

Recovery decisions adopted in 2021	5
Pending recovery cases on 31 December 2021	53

In 2021, the Commission decided to launch one court action under Article 108(2) TFEU for failure to implement the recovery order in SA.34914<sup>149</sup>, but decided to repeal its decision following the confirmation by the United Kingdom that it had fully recovered the illegal State aid.

### 3.5.3. Cooperation with national courts to ensure the effectiveness of State aid rules

The Commission continued its cooperation with national courts under Article 29 of the Procedural Regulation<sup>150</sup>. This includes direct case-related assistance to national courts when they apply EU State aid law. National courts and tribunals can ask the Commission to provide case related information, or to provide an opinion on the application of State aid rules. The Commission may also submit *amicus curiae* observations on its own initiative.

While the Commission received no requests for information in 2021, it received two requests for legal opinions from courts in Latvia and Austria. The first request from the Supreme Administrative Court Senate in Riga concerned the calculation of overcompensation in the financing of renewable energy plants.

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<sup>146</sup> The Member States concerned are Denmark, Italy, Spain and Sweden. See also the information on recovery published by the Commission at: [https://ec.europa.eu/competition-policy/state-aid/procedures/recovery-unlawful-aid\\_en](https://ec.europa.eu/competition-policy/state-aid/procedures/recovery-unlawful-aid_en).

<sup>147</sup> This includes 10 pending recovery cases concerning the agricultural and fisheries sectors.

<sup>148</sup> The reference period is 1 January 1999 to 31 December 2021. This amount includes also the amount of aid registered in pending insolvency proceedings. In addition, the amount of EUR 4.5 billion could not be recovered from concluded insolvency proceedings because of the lack of mass from the liquidation of assets which did not allow satisfying the State aid claims.

<sup>149</sup> SA.34914 - UK- Gibraltar Corporate Tax regime (ITA 2010).

<sup>150</sup> Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 TFEU, OJ L 248 of 24.9.2015, p. 9.

In 2021 the Commission continued to intervene in national proceedings as *amicus curiae*<sup>151</sup>. To make its views publicly known, the Commission publishes its opinions and *amicus curiae* observations, as well as observations to other bodies, for example. arbitration tribunals, on its website<sup>152</sup>.

In July 2021, the Commission adopted a new Notice on the Enforcement of State aid rules by national courts<sup>153</sup> and it replaces the 2009 Enforcement Notice<sup>154</sup>, providing updated practical guidance on the enforcement of State aid rules at national level and on the cooperation tools under Article 29 of the Procedural Regulation.

### 3.6. Significant judgements by the European Union Courts in the State aid area

In 2021, the Union Courts adopted a number of important State aid judgements. The following overview is based on a selection of court judgements, in particular on issues related to the distinction between State aid schemes and individual aid, the notion of selectivity, the compatibility of State aid schemes adopted in response to the COVID-19 outbreak and several procedural points.

#### *Aid scheme and individual aid*

In its judgement *Commission v. Belgium and Magnetrol International*<sup>155</sup>, the CJEU provided clarifications of the notion of an aid scheme. In particular, the Court confirmed that the existence of an aid scheme can be based on a consistent administrative practice; this is possible even if this practice coexists with legal acts that are systematically misapplied by Member States. This allows the Commission to go beyond the wording of the legal acts and determine the real scope of the aid scheme in question in order to ensure the effectiveness of State aid control.

#### *The notions of existing and new aid*

In C-128/19 *Azienda Sanitaria Provinciale di Catania*<sup>156</sup>, the CJEU clarified the notions of existing and new aid. It confirmed that changes such as a prolongation and budget increase to an authorised aid scheme cannot be regarded as being purely formal or administrative in nature. On the contrary, they constitute an alteration to existing aid within the meaning of Article 1(c) of Regulation No 659/1999. Such new aid must be notified, unless it meets the conditions of the de minimis regulation or the block exemption regulation.

#### *Advantage*

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<sup>151</sup> The Commission submitted written observations under Article 29(2) of the Procedural Regulation before the Polish Supreme Court, in relation to a judgment of the Court of Appeal of Warsaw that set aside a commercial arbitration award on the grounds that the arbitration tribunal had failed to assess on its own motion the application of State aid law. The Commission also intervened as *amicus curiae* before courts outside the EU and arbitration tribunals inside and outside the EU in State aid-related matters.

<sup>152</sup> [https://ec.europa.eu/competition-policy/state-aid/national-courts\\_en](https://ec.europa.eu/competition-policy/state-aid/national-courts_en).

<sup>153</sup> Commission Notice on the enforcement of State aid rules by national courts, OJ C 305, 30.7.2021, p. 1.

<sup>154</sup> Commission Notice on the enforcement of State aid law by national courts, OJ C 85, 9.4.2009, p. 1.

<sup>155</sup> Judgment of the Court of Justice, 17.2.2021, C-337/19 P, *Commission v. Belgium and Magnetrol International*, EU:C:2021:741.

<sup>156</sup> Judgment of the Court of Justice of 20.5.2021, C-128/19, *Azienda Sanitaria Provinciale di Catania v. Assessorato della Salute della Regione Siciliana*, EU:C:2021:401.



In C-890/19 P *Fortischem a.s. v Commission*<sup>157</sup>, the CJEU recalled that the application to an undertaking of rules derogating from the normal insolvency rules gives rise to State aid in certain circumstances.

In C-362/19 P *Fútbol Club Barcelona v Commission*<sup>158</sup>, the CJEU confirmed that the examination the Commission must carry out relates exclusively to the scheme in question (ex ante analysis) and not to the aid subsequently granted on the basis of it.

In Joined Cases T-516/18 and T-525/18 *Luxembourg and Engie v Commission*<sup>159</sup>, the General Court held inter alia that the tax rulings were issued in derogation from the national rules on “abuse of law”, so they granted a “selective advantage” to Engie.

In Joined Cases T-816/17 and T-318/18 *Luxembourg and Amazon v Commission*<sup>160</sup>, the General Court annulled the Commission’s primary and alternative findings on an advantage in the context of prices for an IP licence paid between the entities of the group. The General Court considered in particular that the Commission had erred in its functional analysis and finding that a group company was merely a passive holder of the intangible assets in question. The Commission did not take due account of the functions performed by that company for the purposes of exploiting the intangible assets in question or the risks borne by that company in that context. The case is under appeal by the Commission.

As regards the *application* of the Market Economy Operator Principle, in C-933/19 P *Autostrada Wielkopolska S.A. v Commission*<sup>161</sup>, the novelty was that the conduct of the State was compared with that of a “private debtor”, an approach relevant to situations where the State owes money to an undertaking. The CJEU explained that unlike the situations where investors, operators, vendors or creditors seek to maximise respectively the return, fees, sale revenue or recovered assets, a private debtor seeks to minimise the money it has to pay.

### *Economic continuity*

In C-890/19 P *Fortischem a.s. v Commission*<sup>162</sup>, the CJEU confirmed that the transfer price is only one of the factors to be taken into consideration. If it is not clear whether the transaction took place at market price, the Commission is not obliged to take a definitive position on that point.

### *Selectivity*

In a series of judgements delivered on 6 October 2021<sup>163</sup> on the selectivity of a fiscal

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<sup>157</sup> Judgment of the Court of Justice of 29.4.2021, C-890/19 P, *Fortischem a.s. v European Commission*, EU:C:2021:345.

<sup>158</sup> Judgment of the Court of Justice of 4.3.2021, C-362/19 P *Fútbol Club Barcelona v Commission*, EU:C:2021:169.

<sup>159</sup> Judgment of the General Court of 12.5.2021, Joined Cases T-516/18 and T-525/18 *Luxembourg and Engie v Commission*, EU:T:2021:251.

<sup>160</sup> Judgment of the General Court of 12.5.2021, Joined Cases T-816/17 and T-318/18 *Luxembourg and Amazon v Commission*, EU:T:2021:252.

<sup>161</sup> Judgment of the Court of Justice of 11.11.2021, C-933/19 P *Autostrada Wielkopolska S.A. v Commission*, EU:C:2021:905.

<sup>162</sup> Judgment of the Court of Justice of 29.4.2021, C-890/19 P *Fortischem a.s. v Commission*, EU:C:2021:345.

<sup>163</sup> Judgments of the Court of Justice (Grand Chamber) of 6.10.2021, C-50/19 P, *Sigma Alimentos Exterior v Commission*, EU:C:2021:792; C-51/19 P, *World Duty Free Group v Commission* and C-64/19 P, *Spain v*

measure, the CJEU dismissed the appeals against earlier judgements of the General Court, upholding the negative decisions of the Commission adopted in 2011 concerning a Spanish measure allowing the amortisation of financial goodwill for the acquisition of foreign shares. The judgments provide important perspectives for assessing the selectivity of fiscal measures, in particular for determining the reference framework, which is necessary for the determination of selectivity of fiscal measures.

On 16 March 2021, in Cases C-562/19 P *Commission v Poland* and C-596/19 P *Commission v Hungary*<sup>164</sup>, the CJEU upheld the judgements of the General Court from May and June 2019, which had annulled the Commission decisions of 2016 and 2017 in cases SA.44351 (Polish tax on retail sector with progressive rates) and SA.39235 (Hungarian advertisement tax with progressive tax rates) on the grounds that, in the assessment of selectivity, the Commission incorrectly identified the reference tax system. The Court found that, outside the spheres in which EU tax law has been harmonised, the determination of the characteristics constituting each tax falls within the discretion of the Member States, in accordance with their fiscal autonomy. This includes, in particular, the choice of tax rate, which may be proportional or progressive, and also the determination of the basis of assessment and the taxable event. Those characteristics constituting the tax therefore, in principle, define the reference system or the ‘normal’ tax regime, from which it is necessary to analyse selectivity. In addition, the Court noted that EU law does not preclude progressive taxation from being based on turnover as it constitutes, in general, a relevant indicator of the taxable person’s ability to pay. Accordingly, the characteristics constituting the tax, which include progressive tax rates, form, in principle, the reference system or the ‘normal’ tax regime. Further, the Court considered that the Gibraltar case-law (*Commission and Spain v Government of Gibraltar and United Kingdom* (C-106/09 P and C-107/09 P)) does not contradict the above finding, because the Commission had not established that the progressivity of the rates was designed in a manifestly discriminatory manner, with the aim of circumventing the requirements of EU law on State aid.

#### *Legality of schemes adopted in response to the COVID-19 pandemic*

In 2021, a novel type of litigation related to various types of aid during the COVID-19 pandemic emerged. The most frequent issues in this type of actions - initiated mainly by Ryanair - related to the application and conditions of Article 107(2)(b) TFEU as well as Article 107(3)(b) TFEU. The General Court also rejected the claims about an infringement of the principle of non-discrimination and the freedom to provide services. Out of the ten judgments rendered so far at first instance, the Commission decisions were annulled in three instances, all for the breach of the duty to state reasons.

In its judgement of 17 February 2021, *Ryanair v Commission*<sup>165</sup>, the General Court dismissed Ryanair’s action against the Commission’s decision not to raise objections concerning State aid by Sweden to airlines operating in Sweden. As regards the allegation that the aid was

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*Commission*, EU:C:2021:793; C-52/19 P, *Banco Santander v Commission*, EU:C:2021:794; C-53/19 P, *Banco Santander and Santusa v Commission* and C-65/19 P, *Spain v Commission*, EU:C:2021:795; C-54/19 P, *Axa Mediterranean v Commission*, EU:C:2021:796; C-55/19 P, *Prosegur Compañía de Seguridad v Commission*, EU:C:2021:797.

<sup>164</sup> Judgments of the Court of Justice (Grand Chamber) of 16.3.2021, C-562/19 P *Commission v Poland*, EU:C:2021:201 and C-596/19 P *Commission v Hungary*, EU:C:2021:202.

<sup>165</sup> Judgment of the General Court of 17.2.2021, T-238/20, *Ryanair v Commission*, EU:T:2021:91, Case under [Appeal before the Court of Justice C-209/21 P](#).

discriminatory, the General Court noted that the aid scheme fulfilled the conditions laid down in Article 107(3)(b) TFEU. The General Court also considered that limiting eligibility for the aid only to those airlines holding a Swedish operating licence, in view of the stable and reciprocal links between them and the Swedish economy, was appropriate to achieve the objective of remedying the serious disturbance in the Swedish economy.

In another judgement of 17 February 2021, *Ryanair v Commission*<sup>166</sup>, the General Court dismissed Ryanair's action against the Commission's decision not to raise objections concerning aid by France to airlines operating in France (moratorium on the collection of civil aviation tax and the solidarity tax ordinarily imposed by the French State). The General Court confirmed that the COVID-19 pandemic as well as the restrictions and lockdown measures adopted by France to deal with its consequences, constituted an exceptional occurrence within the meaning of Article 107(2)(b) TFEU, which caused economic damage to the airlines operating in France. The General Court considered that the purpose of the deferral of the payment of the taxes had the objective to repair the damage in question.

### *Procedural issues*

In its judgement of 22 September 2021, *DEI v Commission*<sup>167</sup>, the General Court annulled the decisions by which the Commission came to the conclusion that an arbitration award setting an allegedly preferential tariff for electricity did not involve an advantage to an aluminium producer. In this judgement, the General Court clarified the concept of *complainant* as an 'interested party' with standing to bring an action against a decision. In addition, the General Court considered that the Commission should have made a diligent, sufficient and comprehensive assessment, by carrying out economic and technical analysis, to determine whether the electricity tariff complied with the market conditions.

In its judgement of 2 September 2021, *Commission v Tempus energy and Tempus Energy Technology*<sup>168</sup>, the CJEU set aside the earlier judgment of the General Court and upheld the Commission's decision on the UK capacity market (security of supply mechanism in the United Kingdom in the field of electricity). The judgement confirmed that the Commission correctly applied Article 108 TFEU when it decided not to raise objections against the aid without a formal investigation. In particular, the CJEU clarified that the length of contacts between the Commission and the Member States, the complexity of a measure, the high budget of a measure or the existence of spontaneous observations from third parties did not in themselves entail that the Commission had serious difficulties to determine that the aid was compatible. The CJEU also confirmed that the Commission is not obliged to seek all information which might be connected with the case before it, even where such information is in the public domain.

In C-933/19 P *Autostrada Wielkopolska S.A. v Commission*<sup>169</sup>, the CJEU recalled that

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<sup>166</sup> Judgment of the General Court of 17.2.2021, T-259/20, *Ryanair v Commission*, EU:T:2021:92, Case under [Appeal before the Court of Justice C-210/21 P](#).

<sup>167</sup> Judgment of the General Court of 22.9.2021, joined cases T-639/14 RENV, T-352/15 and T-740/17, *DEI v Commission*, EU:T:2021:604.

<sup>168</sup> Judgment of the Court of Justice of 2.9.2021, C-57/19 P, *Commission v Tempus energy and Tempus Energy Technology*, EU:C:2021:663.

<sup>169</sup> Judgment of the General Court of 11.11.2021, C-933/19 P *Autostrada Wielkopolska S.A. v Commission*, EU:C:2021:905, Case under [Appeal before the General Court T-778/17](#).



interested parties cannot themselves seek to engage in an adversarial debate with the Commission in the same way as a Member State. Although during the administrative procedure new guidelines entered into force, the CJEU concluded that the facts of the case had not changed so as to merit a second round of contacts between the Commission and the beneficiary. The Commission was not obliged to grant interested parties the opportunity to comment on the observations of the Member State.

## 4. DEVELOPING THE INTERNATIONAL DIMENSION OF EU COMPETITION POLICY

### 1.5. Multilateral relations

In 2021, the Commission continued its active engagement in international competition-related fora such as the OECD Competition Committee, the International Competition Network (ICN), and United Nations Conference on Trade and Development (UNCTAD).

At the OECD Competition Committee meeting in June 2021, the Commission contributed to the discussions on competition enforcement and regulatory alternatives<sup>170</sup>, competition compliance programmes<sup>171</sup>, the concept of potential competition<sup>172</sup> and methodologies to measure market competition<sup>173</sup>. In December 2021, the Commission contributed to the Competition Committee's deliberations on the environmental considerations in competition enforcement<sup>174</sup> and the promotion of competitive neutrality by competition authorities<sup>175</sup>.

As co-chair role of the ICN Unilateral Conduct Working Group, the Commission continued the multi-annual project on the “assessment of dominance and market power in digital markets”. The Commission contributed to various work products of the Cartel Working Group, in particular “Guidance on Enhancing Cross-border Leniency Cooperation”, “Crisis Cartels and Horizontal Cooperation in the time of COVID-19”, and the “Big Data and Cartels Project”.

In July 2021, the Commission participated in the 19th meeting of the UNCTAD Intergovernmental Group of Experts on Competition Law and Policy. The session on Competition Law, Policy and Regulation in the Digital Era focused on the challenges that competition authorities face in digital markets<sup>176</sup>. In November 2021, the Commission participated in the Ad Hoc Working Group on Cross Border Cartels. The Commission emphasized the trusted principles developed within the ECN with regard to cooperation and prosecution of cartels. Moreover, in December 2021, the Commission also participated to the UNCTAD Global Policy Dialogue focusing on small and medium sized enterprises and Competition Policy in the wake of the post COVID-19 pandemic.

Finally, the Commission continued its endeavours to improve international rules for subsidies. Reforming the subsidy rules is one of the EU's main priorities for the modernisation of WTO trade rules, as confirmed in the joint statement of the EU, US and Japan<sup>177</sup>. To this effect, in 2021 the Commission was engaged in sectoral initiatives addressing subsidies in the international context, such as the G20 Global Forum on steel excess capacity.

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<sup>170</sup> See: <https://www.oecd.org/daf/competition/competition-enforcement-and-regulatory-alternatives.htm>.

<sup>171</sup> See: <https://www.oecd.org/daf/competition/competition-compliance-programmes.htm>.

<sup>172</sup> See: <https://www.oecd.org/daf/competition/the-concept-of-potential-competition.htm>.

<sup>173</sup> See: <https://www.oecd.org/daf/competition/methodologies-to-measure-market-competition.htm>.

<sup>174</sup> See: <https://www.oecd.org/daf/competition/environmental-considerations-in-competition-enforcement.htm>.

<sup>175</sup> See: <https://www.oecd.org/daf/competition/the-promotion-of-competitive-neutrality-by-competition-authorities.htm>.

<sup>176</sup> See: <https://unctad.org/meeting/intergovernmental-group-experts-competition-law-and-policy-nineteenth-session>.

<sup>177</sup> See: <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2330>.

## 1.6. Bilateral relations

In December 2021, the Commission and the US competition authorities launched the EU-US Joint Technology Competition Policy Dialogue to develop common approaches and strengthen the cooperation on competition policy and enforcement in the tech sectors<sup>178</sup>.

With regard to the Korean and Japanese Fair Trade Commissions there was close bilateral cooperation under the respective cooperation agreements<sup>179</sup>. DG Competition's multilateral technical cooperation with the Chinese, Japanese, Korean, Indian and ASEAN competition authorities continued<sup>180</sup>. The Commission continued its cooperation in competition policy and in case review with China's State Administration for Market Regulation (SAMR) under the 2019 cooperation documents. The Commission aims to include provisions on competition and State aid control when negotiating Free Trade Agreements (FTAs). In 2021, the Commission continued FTA negotiations with Australia, Azerbaijan, Chile, Indonesia, New Zealand and Uzbekistan.

As regards the draft Second Generation Cooperation Agreement between the EU and Canada, the Commission is in regular contact with the Canadian Competition Bureau to find a solution on data protection in Canada lining up to the standards established by the Opinion of the Court of Justice on the 2014 EU Canada Passenger Name Record Agreement<sup>181</sup>. Moreover, the Commission continued the negotiations with Japan on a Second Generation Agreement with a view to updating the existing cooperation agreement from 2003<sup>182</sup>.

With regard the candidate and potential candidate countries, the Commission's main policy objective is to help these countries to create legislative frameworks with well-functioning operationally independent competition authorities that build up a solid enforcement record. In 2021, the Commission continued to monitor candidate countries' compliance with their commitments under the Stabilisation and Association agreements. In addition, the Commission continued monitoring the implementation of the competition acquis in neighbouring countries, with which the EU has concluded deep and comprehensive free trade agreements.

The Commission has also been actively engaging with several African national and regional authorities to develop cooperation in the competition field. In 2021, the Commission hosted joint workshops with the South African Competition Commission on digital aspects of competition law and inter-agency cooperation. In 2022, the Commission will organise Africa-EU Competition Weeks for the first time to foster dialogue with African competition authorities at the national and regional level.

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<sup>178</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_6671](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_6671).

<sup>179</sup> See: [https://ec.europa.eu/competition-policy/international/bilateral-relations/korea\\_en](https://ec.europa.eu/competition-policy/international/bilateral-relations/korea_en); [https://ec.europa.eu/competition-policy/international/bilateral-relations/japan\\_en](https://ec.europa.eu/competition-policy/international/bilateral-relations/japan_en).

<sup>180</sup> See: <https://asia.competitioncooperation.eu/>.

<sup>181</sup> Opinion of the Court of Justice (Grand Chamber) of 26.7.2017, Opinion 1/15, *Draft agreement between Canada and the EU — Transfer of Passenger Name Record data from the EU to Canada*, EU:C:2016:656.

<sup>182</sup> See: [https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:22003A0722\(01\)](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:22003A0722(01)).

## 5. SUPPORTING EU COMPETITION LAW ENFORCEMENT

### 5.1. Digital transformation

The Commission recognises digital transformation as a major political priority for its current mandate (Europe Fit for the Digital Age), not only for driving change in markets but also for enabling public sector modernisation. The implementation of DG Competition's Digital Strategy to further digitise business processes, modernise digital solutions and to transform it into a more data-driven organisation to support EU competition policy enforcement continued throughout 2021 in alignment with the Commission's Digital Strategy<sup>183</sup>. In addition, DG Competition updated and continued to implement its IT security action plan to further improve cybersecurity of its information systems, their security plans and staff's cyber skills and awareness, this in collaboration with DG DIGIT.

#### 5.1.1 Case management modernisation

In 2021, a new corporate case management platform - CASE@EC – has been rolled out for State aid case management as well as document registration and document management processes for all competition enforcement instruments. Work continued to prepare the implementation of CASE@EC for other areas, in particular case management in antitrust, cartel and merger cases.

#### 5.1.2. Improving digital exchanges with Member States' administrations, companies and citizens

During 2021, DG Competition continued improving its range of existing digital solutions to enhance and fully digitise communication and collaboration processes with its external stakeholders, in particular Member State administrations, National Competition Authorities, citizens and businesses as well as attorneys and law firms. This included for example a revamped tool for Member States to report State aid (SARI2) and a new solution digitizing the negotiation on confidentiality claims with parties and producing non-confidential versions of documents in the context of Access to File and preparation of decisions (eConfidentiality).

DG Competition also launched a pilot for a new digital solution supporting requests for information in the context of market investigations (eRFI), and started a project to revamp the publication of competition cases' data on the EUROPA website<sup>184</sup> to help citizens and external stakeholders to better access, search and export public data on competition.

#### 5.1.3. Advanced data support and digital solutions for competition investigations

As DG Competition continues facing an exponential increase in the volume of electronic communications with parties as well as in electronic evidence, projects have started to improve the handling of large volumes of case related submissions as well as on premise access to files by parties concerned, developments for advanced data and machine learning services and solutions to support investigations.

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<sup>183</sup> Communication from the Commission of 21.11.2018, European Commission Digital Strategy – A digitally transformed, user-focused and data-driven Commission, C(2018) 7118 final.

<sup>184</sup> See [https://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy\\_area\\_id=3](https://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy_area_id=3).

Moreover, DG Competition keeps investing into state-of-the-art, non-standard hardware and software solutions operated by specialised staff in the context of investigative and forensic IT activities, performed to better detect and effectively prosecute anticompetitive conduct.

## 5.2. Single Market Programme

Adapting to an increasingly digital and fast-paced environment is a constant challenge for the enforcement of EU competition policy. New sophisticated digital tools and algorithms used by economic operators, combined with an exponential increase in electronic communications, the sheer quantity of data and the number of documents on case files render many competition investigations increasingly complex. DG Competition therefore identified digital transformation as a key priority for 2021 and concentrated efforts to put in place innovative and modernised digital solutions to make competition enforcement more effective by working on the implementation of its Digital Solutions Modernisation Plan.

The Multiannual Financial Framework 2021-2027 also responds to these new challenges by including for the first time a dedicated Competition programme as part of the Single Market Programme<sup>185</sup> with a budget dedicated to actions in support of competition policy and enforcement. With a budget of EUR 20.4 million for 2021, the Competition programme channels investment into areas that support effective and up-to-date enforcement of EU competition policy as well as policy actions, cooperation and partnerships with public administrations in the EU, global cooperation and partnerships with third country authorities, and helps raising stakeholder awareness of EU competition policy.

Programme implementation however encountered some delays in 2021 due to the late adoption of the Single Market Programme and the necessary Implementing Commission Decision<sup>186</sup>, which meant that calls for tenders or other procurement measures could only be launched as of May 2021. The COVID-19 pandemic further prevented a number of planned actions to take place in the originally envisaged formats, and activities together with Member States, at international level or advocacy events continued in mostly remote and virtual formats throughout 2021.

Despite these constraints, DG Competition has been actively pursuing a comprehensive plan to implement the Competition programme. It has, in particular, invested in the development of digital business solutions dedicated to modernise case management and interactions with external stakeholders and to increase the speed and efficiency of competition enforcement through data and artificial intelligence solutions. Furthermore, the Commission has launched a call for proposals targeting national law enforcement agencies in EU Member States, with a view to offer training for national law enforcement agencies specializing in economic and financial investigations and to raise their awareness of competition and development of investigative cooperation.

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<sup>185</sup> Regulation (EU) 2021/690 of the European Parliament and of the Council of 28 April 2021 establishing a programme for the internal market, competitiveness of enterprises, including small and medium-sized enterprises, the area of plants, animals, food and feed, and European statistics (Single Market Programme) and repealing Regulations (EU) No 99/2013, (EU) No 1287/2013, (EU) No 254/2014 and (EU) No 652/2014. OJ L 153, 3.5.2021, p. 1–47.

<sup>186</sup> Commission Implementing Decision of 6 May 2021 on the financing of the Programme for Single Market, competitiveness of enterprises, including small and medium sized enterprises, and European Statistics and the adoption of the work programme for 2021-2024, See: [https://ec.europa.eu/info/publications/210506-financing-single-market-programme-decision\\_en](https://ec.europa.eu/info/publications/210506-financing-single-market-programme-decision_en).

### **5.3. External Communication and Advocacy**

DG Competition reaches out to a variety of stakeholders, including businesses, lawyers and other advisers, policy makers, academics, students and civil society more generally. Various channels are being used for this purpose, first and foremost Executive Vice-President Vestager's own press conferences and speeches, complemented by press releases, newsletters, conferences, specialised publications and an active social media presence.

In 2021, Executive Vice-President Vestager delivered 43 speeches to a variety of audiences. The Director-General also participated in more than 40 international events. DG Competition posted some 900 tweets from its account and reached close to 14 000 subscribers with its electronic newsletter; its publications in the EU Bookshop were viewed, downloaded or ordered as paper copies some 6 000 times.

DG Competition issued more than 1 000 press releases during 2021. Some of the cases and policy initiatives generated broad media coverage, for example the Statement of Objections sent to Apple on App Store rules for music streaming providers, the decision to fine car manufacturers for restricting competition in emission cleaning for new diesel passenger cars and the proposal for a new regulation to address distortions caused by foreign subsidies in the Single Market.

## II. SECTORAL OVERVIEW

### 1. ENERGY & ENVIRONMENT

#### 1.1 Overview of key challenges in the sector

Competition policy contributes to the EU's environmental objectives and climate targets, including the decarbonisation of the economy. To this end, the Commission has authorised State aid measures promoting the deployment of renewables, improving energy efficiency and stimulating demand for low emission vehicles for public and private transport, thereby contributing to the reduction of greenhouse gas (GHG) emissions. Competition policy also ensures that consumers have access to clean, affordable and sustainable energy and supports innovation.

Following the adoption of the Communication on the European Green Deal<sup>187</sup> in December 2019, which presented a roadmap of the key policies and measures needed to reach net-zero GHG emissions in the EU by 2050 and to tackle other environment-related challenges, the EU co-legislators in 2021 adopted the European Climate law<sup>188</sup> in order to ensure that the EU's climate neutrality goals will be met.

On 4 February 2021, the “Greening Competition Conference” took place to debate how competition rules and sustainability policies can work together. As follow-up, in September 2021, DG Competition published a Competition Policy Brief on the competition policy initiatives to achieve the Green Deal objectives<sup>189</sup>.

In the field of State aid, on 21 December 2021, the College of Commissioners endorsed the CEEAG<sup>190</sup>, replacing the 2014 EEAG (whose validity had been extended until the end of 2021). The CEEAG were formally adopted on 27 January 2022, entering into force on that date.

The CEEAG broaden the categories of investments and technologies that Member States can support and allow or expand aid for the prevention or reduction of pollution other than in the form of GHG, including noise pollution, aid for resource efficiency and circular economy, aid for biodiversity and for the remediation of environmental damage. They feature specific sections for aid incentivising investments in areas such as the decarbonisation of industrial processes, energy performance of buildings, and clean mobility, and ensure coherence with relevant EU law and policy, in particular, ending subsidies for the most polluting fossil fuels. They allow aid for up to 100% of the funding gap, especially where there is competitive bidding. This makes it unlikely that aid will be allowed for the most polluting fossil fuels; aid to gas will be allowed only if it is compatible with EU climate targets for 2030 and 2050. The CEEAG also contain a new section on aid for the closure of coal, peat and oil shale plants to facilitate decarbonisation in the power sector. They introduce safeguards to ensure aid is

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<sup>187</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal, COM(2019) 640 final.

<sup>188</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (“European Climate Law”), OJ L 243, 9.7.2021, p. 1–17.

<sup>189</sup> [https://ec.europa.eu/competition-policy/index/news/competition-policy-brief-12021-policy-support-europes-green-ambition-2021-09-10\\_en](https://ec.europa.eu/competition-policy/index/news/competition-policy-brief-12021-policy-support-europes-green-ambition-2021-09-10_en).

<sup>190</sup> [https://ec.europa.eu/competition-policy/system/files/2021-12/CEEAG\\_Guidelines\\_with\\_annexes\\_I\\_and\\_II\\_0.pdf](https://ec.europa.eu/competition-policy/system/files/2021-12/CEEAG_Guidelines_with_annexes_I_and_II_0.pdf).



directed effectively to where it is needed, requiring Member States to consult the public and stakeholders on the main elements of large aid measures. Finally, they increase flexibility by, for instance, eliminating the requirement for individual notifications of large green projects within aid schemes previously approved by the Commission. Furthermore, the corresponding GBER articles will be revised as part of the targeted review of the GBER<sup>191</sup>. This revision proposes to enlarge the scope of the GBER by expanding the set of measures exempted from *ex-ante* notification and to increase the notification thresholds for climate, energy and environmental protection measures, whenever objectively justified.

## 1.2 Effective competition in the green economy

In 2021, competition enforcement continued to contribute to the EU environmental objectives through the application of the State aid, antitrust and merger rules.

### 1.2.1. Zero- and low-emission mobility

Zero- and low-emission mobility has been one of the Commission's focal points. The large-scale deployment of electric charging and hydrogen-refuelling stations under a competitive market is important to ensure the take-up of electric and hydrogen powered vehicles and encourage the shift away from fossil fuels.

In 2021, the Commission approved several schemes for the deployment of electric charging stations and other alternative refuelling infrastructure as well as for the acquisition of zero- or low-emission vehicles (in particular electric or hydrogen buses for public transport)<sup>192</sup>. It also advised Member States on several other schemes to either bring them under the GBER or to ensure that they did not entail State aid in line with published relevant guidance<sup>193</sup>.

In July 2021 the Commission amended the GBER by introducing a new block exemption for aid for publicly accessible recharging or refuelling infrastructure for the supply of electricity and hydrogen to zero and low emission road vehicles for transport purposes. This will facilitate aid for comprehensive networks of such infrastructures in the Member States far beyond what was possible under the GBER rules in place before the amendment<sup>194</sup>.

In July 2021<sup>195</sup>, the Commission adopted a decision against five car manufacturers - Daimler, BMW, Volkswagen, Audi and Porsche, imposing fines totalling of EUR 875 million for restricting technical development in the area of emission cleaning technology for diesel cars. Daimler was not fined because it revealed the existence of the cartel. All companies acknowledge their involvement in the cartel and agreed to settle the case. The car manufactures held regular technical meetings to discuss the development of the selective

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<sup>191</sup> See: [https://ec.europa.eu/competition-policy/public-consultations/2021-gber\\_en](https://ec.europa.eu/competition-policy/public-consultations/2021-gber_en).

<sup>192</sup> See for example Cases SA.61890 – Germany - RRF - Support scheme for the acquisition of alternative fuel buses for passenger transport; SA.62618 - Portugal - Zero Emission Buses and respective supporting infrastructure; SA.60775 – Germany - Publicly accessible charging infrastructure for electric vehicles; SA.59352 – Germany - Federal aid scheme for the acquisition of light and heavy commercial vehicles ancillary EV charging facilities; SA.63458 - Germany – Aid for ancillary hydrogen refuelling facilities; SA.63718 – Poland - Development of a recharging infrastructure for electric vehicles and hydrogen refuelling stations and SA.64653 - Portugal – RRF - Zero Emission Buses and respective supporting infrastructure.

<sup>193</sup> See [https://ec.europa.eu/competition-policy/system/files/2021-12/template\\_RRF\\_electric\\_and\\_hydrogen\\_charging\\_stations.pdf](https://ec.europa.eu/competition-policy/system/files/2021-12/template_RRF_electric_and_hydrogen_charging_stations.pdf); [https://ec.europa.eu/competition-policy/system/files/2021-12/template\\_RRF\\_premiums\\_acquisition\\_low\\_emission\\_vehicles.pdf](https://ec.europa.eu/competition-policy/system/files/2021-12/template_RRF_premiums_acquisition_low_emission_vehicles.pdf).

<sup>194</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_3804](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3804).

<sup>195</sup> Case AT. 40178 - Car Emissions, see: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_3581](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3581).

catalytic reduction (SCR)-technology which eliminates harmful nitrogen oxide (NO<sub>x</sub>)-emissions from diesel passenger cars through the injection of urea (also called “AdBlue”). During these meetings, and for over five years, the car manufacturers coordinated the size and ranges of the AdBlue tank and had a common understanding on the average AdBlue consumption. Through their collusive practices, they signalled to each other that they would not aim to clean better than required by law. It is the first time that the Commission has sanctioned a cartel that only concerns collusion to limit technical development.

### *1.2.2. Energy efficiency in buildings*

The GBER amendment of July 2021 simplifies the rules for State aid for energy efficiency measures in certain categories of buildings. This includes residential buildings and a new possibility of combining aid for energy efficiency measures with aid for on-site renewable energy installations, storage facilities for the renewable energy produced, equipment and infrastructures for the recharging of electric vehicles and investments in the digitalisation of the building, as well as a new possibility allowing for the aid measures to also relate to the facilitation of energy performance contracts<sup>196</sup>.

### *1.2.3. Energy and environmental aid and the Recovery and Resilience Facility*

In 2020, the Commission published guiding templates to assist Member States in the design of their national Recovery and Resilience Plans (RRPs) in line with EU State aid rules, including for a series of support measures for environmental protection in line with the “European flagships” of the Commission’s Annual Sustainable Growth Strategy 2021<sup>197</sup>. So far, the Commission has endorsed 22 RRPs<sup>198</sup>. Furthermore, Member States shall notify to the Commission any plans to grant aid, pursuant to Article 108 TFEU. In 2021, the Commission adopted four no objection decisions concerning renewables and energy storage under the RRPs<sup>199</sup>, with further decisions expected in the future.

### *1.2.4. Renewables and cogeneration*

In 2021, the Commission adopted 20 no objection decisions concerning renewables and combined heat and power support schemes<sup>200</sup>, which concerned a number of different renewable technologies (for example geothermal, photovoltaic, onshore and offshore wind, biomass), including support for local communities and the use of decarbonisation technologies (such as hydrogen).

On 29 April 2021, the Commission approved the prolongation and modification of a German scheme to support the production of electricity from renewable energy sources and from mine gas, as well as reductions of charges to fund support for electricity from renewable sources.

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<sup>196</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_3804](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3804).

<sup>197</sup> See [https://ec.europa.eu/competition-policy/state-aid/coronavirus/rrf-guiding-templates\\_en](https://ec.europa.eu/competition-policy/state-aid/coronavirus/rrf-guiding-templates_en).

<sup>198</sup> [https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility\\_en#the-recovery-and-resilience-facility](https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility_en#the-recovery-and-resilience-facility).

<sup>199</sup> Cases SA.57089 – Croatia – RRF - Renewable energy sources scheme in Croatia; SA.57473 - Greece – RRF - Pumped Hydro plant – Amfilochia – Greece; SA.58731 – Austria - RRF - Operating aid to electricity from RES in Austria; SA.63178 - Lithuania – RRF - Aid to Electricity Storage investment Project.

<sup>200</sup> Cases SA.60596 - Malta, SA.54318 - Slovakia, SA.53308 - Germany, SA.57858 - Denmark, SA.57610 - Germany, SA.62025 - France, SA.57779 - Germany, SA.55940 - Poland, SA.56826 - Germany, SA.50272 - France, SA.61902 - France, SA.60115 - France, SA.62218 - France, SA.64713 - Poland, SA.64376 - Germany, SA.63414 - Germany, SA.57089 - Croatia, SA.60064 - Greece, SA.58482 – Greece and SA.56831 - Denmark.

The reduction of charges will be available to energy-intensive companies and shore-side electricity supply to ships while at berth in ports<sup>201</sup>.

In addition, on 20 December 2021, the Commission approved the Austrian State aid scheme to support electricity production from renewable sources (wind, solar, hydro, biomass and biogas) until the end of 2030<sup>202</sup>.

Antitrust enforcement also contributes to the objective of a low-carbon economy and the European Green Deal. In 2021, the Commission continued its investigation of ethanol producers suspected of having colluded with the aim of influencing the ethanol benchmarks published by the price-reporting agency Platts, harming competition and undermining the European Green Deal and EU energy objectives. On 10 December 2021, the Commission adopted a settlement decision with a fine of EUR 20 million against Abengoa (Spain) in this case<sup>203</sup>. The investigation is still ongoing for the other companies concerned.

On 10 September 2021, the Commission concluded the long-running Greek lignite antitrust case by making legally binding the measures proposed by Greece to remove the distortion created by its granting of exclusive access to lignite-fired generation to the state-owned incumbent Public Power Corporation (PPC)<sup>204</sup>. Specifically, Greece committed to ensure that PPC sells a portion of its wholesale electricity (generated from hydropower, gas, renewables, or lignite) through the two power exchanges present in Greece, EEX or HEnEx, several months ahead of actual delivery. This allows PPC's rivals to have stable access to generation volumes necessary to hedge their prices against volatility, and therefore to more easily make offers to final consumers. The measures, which will lapse when the existing highly-polluting lignite plants stop commercial operations under Greece's National Energy and Climate Plan (or at the latest by the end of 2024), are also fully in line with the European Green Deal and the EU's climate objectives.

#### *1.2.5. Coal exit*

Phasing out coal-fired power plants also contributes in a crucial way to the transformation to a climate-neutral economy, in line with the European Green Deal objectives. In 2021, the Commission continued examining measures taken by Member States to support the phase-out from coal-fired power generation. In particular, in March 2021 the Commission opened an in-depth investigation to assess whether German plans to compensate lignite-fired power plants for phasing out earlier than foreseen are in line with EU State aid rules<sup>205</sup>.

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<sup>201</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_2042](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2042); the scheme is part of the German Renewable Energy Act ("Erneuerbare-Energien-Gesetz" - 'EEG 2021'). The scheme will help Germany reach its renewable energy targets (65% of electricity produced from renewable energy sources by 2030) without unduly distorting competition. Payments under the scheme for 2021 have been estimated to amount to around EUR 33.1 billion.

<sup>202</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_7023](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_7023); the scheme will help Austria reach its target of 100% renewable energy in 2030, in line with its RRP, and will contribute to the European objective of achieving climate neutrality by 2050, without unduly distorting competition.

<sup>203</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_6769](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6769).

<sup>204</sup> CaseAT.38700-Greek lignite and electricity markets;  
See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_4661](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_4661).

<sup>205</sup> Case SA.53625 - Germany – Lignite phase-out.

Furthermore, the CEEAG introduce new compatibility rules for measures that Member States may take to support the closure of power plants that burn coal, peat or oil shale and of mining operations for these fuels<sup>206</sup>.

### 1.3 Secure Energy Supply

In 2021, the Commission continued its enforcement activity with respect to measures aimed at the security of energy supply, including capacity mechanisms.

In August 2021, following a formal investigation procedure, the Commission concluded that the Belgian capacity mechanism complied with the EEAG and with the Electricity Regulation<sup>207</sup>. In particular, the Commission found that, in contrast with its preliminary findings in its decision opening a formal investigation, Belgium had improved its resource adequacy assessment and brought it in line with the EU-wide methodology for resource adequacy assessment approved by the European Union Agency for the Cooperation of Energy Regulators (ACER) in October 2020<sup>208</sup>.

In addition, in 2021, the Commission approved, under EU State aid rules, a EUR 166.7 million Greek support measure (direct grant in favour of Gastrade SA) for the construction of a new liquefied natural gas (LNG) terminal in Alexandroupolis, Greece. The project will contribute to the security and diversification of energy supplies in Greece and, more generally, in the region of South East Europe, without unduly distorting competition<sup>209</sup>.

### 1.4 Effective competition in energy markets

The objective of competition law enforcement in the energy sector is to complement sector-specific regulation to create a well-functioning internal market for energy, where energy can be exchanged freely and securely across the EU, and where all related services are provided in a competitive manner, thus allowing businesses and consumers to benefit from reliable and sustainable energy at affordable prices.

In March 2021, the Commission initiated proceedings against the Greek electricity incumbent PPC for potential predatory behaviour in the wholesale electricity market in the Greek interconnected system (mostly mainland Greece)<sup>210</sup>. The investigation focuses on PPC's alleged strategic bidding behaviour that may have resulted in its thermal units being selected for generation even when they did not cover their average variable costs. PPC's exclusionary behaviour allegedly prevented its main generation rivals from expanding in the wholesale market and resulted in Greek consumers facing higher prices, less choice, and more pollution from less green sources of electricity generation.

Electricity trading plays an important and growing role in the effective and safe management of electricity grids and helps to ensure that electricity flows from where it is produced to

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<sup>206</sup> See Section 4.12.1 of the CEEAG, which concerns aid granted by Member States to compensate for the early closure of profitable activities, while Section 4.12.2 of the CEEAG concerns aid granted by Member States to cover exceptional social and environmental costs arising from the closure of uncompetitive activities.

<sup>207</sup> Regulation (EU) 2019/943 of the European Parliament and of the Council of 5.6.2019 on the internal market for electricity OJ L 158, 14.6.2019, p. 54-124.

<sup>208</sup> Case SA.54915 – *Belgium - Market wide capacity mechanism in Belgium*.

<sup>209</sup> Case SA.55526 – *Greece - LNG Terminal Alexandroupolis in Greece*.

<sup>210</sup> Case AT.40278 - *Greek wholesale electricity market*. This investigation is unrelated to case AT.38700 concerning the privileged access rights to lignite granted by the Greek state to publicly-owned PPC (see above under 1.2.4).

where it is needed. Following a complaint, the Commission decided to open a formal investigation on 30 March 2021 to assess whether the power exchange EPEX Spot SE has been taking advantage of its dominant position to hinder the activities of competitors on the market for electricity intraday trading facilitation services in at least six Member States (Austria, Belgium, France, Germany, Luxembourg and the Netherlands)<sup>211</sup>. This behaviour, if proven, may be contrary to Article 102 TFEU as it may distort the prices of electricity trading, and could ultimately lead to higher electricity prices for consumers and a slowdown in the greening of the electricity system by preventing the cost-effective integration of renewable technologies in the electricity mix.

In the context of the spike in energy prices observed in the second half of 2021, the Commission started investigations into whether Europe's main gas suppliers may have engaged in anti-competitive conduct aimed at pushing up gas prices in Europe.

The environment sector also saw intense merger and acquisition activity in 2021. In April 2021, the Commission approved the acquisition of several waste management companies located in Germany, Luxembourg, the Netherlands and Poland by Schwarz Group from Suez, subject to the divestment of the lightweight packaging (LWP) sorting plant in Rotterdam originally owned by Suez<sup>212</sup>. The transaction, as originally notified, would have brought together the two largest players in the LWP sorting market in the Netherlands, and would have probably led to higher prices for LWP sorting, higher recycling costs and, ultimately, increased prices in consumer goods.

The Commission authorised on 14 December 2021 the acquisition of Suez by Veolia<sup>213</sup>, subject to the divestment of almost the entirety of Suez's waste and water businesses in France. Both companies are major global players in the management of water and waste, and the Commission found that the transaction as originally notified would have probably led to higher prices and lower quality of service for public sector and industrial customers.

On 16 December 2021, the Commission also authorised the acquisition of Group Ecore by Derichebourg<sup>214</sup>, subject to the divestment of several metal scrap collection and recycling plants in France. Both companies are leading players in the collection, recycling and commercialisation of metal scrap in France, and together they would have had a strong position in several regions, which would have led to higher prices and less choice for suppliers and customers, to the detriment of consumers. Derichebourg offered to divest a number of plants, fully addressing the competition concerns identified by the Commission.

## **2. INFORMATION AND COMMUNICATION TECHNOLOGIES AND MEDIA**

### **2.1 Overview of key challenges in the sector**

Markets in the information, communication, technologies and media sectors (ICT) continue to evolve at rapid pace with new devices and new intangible advances appearing, such as services, applications, and ecosystems. Business models and sources of revenue tend to change faster in digital markets than elsewhere. The media sector has significantly evolved due to technological convergence as content is delivered to users via an increasing array of devices and networks (for example films, music and editorial content offered by different

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<sup>211</sup> Case AT.40700 - *Intraday trading of wholesale electricity*.

<sup>212</sup> Case M.10047 – *Schwarz Group / Suez Waste Management Companies*, Commission Decision of 14.4.2021.

<sup>213</sup> Case M.9969 – *Veolia / Suez*, Commission Decision of 14.12.2021.

<sup>214</sup> Case M.10249 - *Derichebourg Environnement / Groupe Ecore Holding*, Commission Decision of 16.12.2021.



platforms are available on TV screens, phones, tablets and laptops running through different telecommunications networks, including fixed or mobile). Technological innovation has also created new cross-border opportunities and poses challenges to established business practices.

The frequently observed network effects in ICT markets render them particularly prone to consumer lock-in and entrenched positions of dominant suppliers. Market players frequently hold a dual role, by operating a platform or marketplace for third parties and at the same time offering their own products or services on that platform or marketplace in competition with those third parties. In ICT markets, access to and control over various types of data will often be decisive for commercial success. At the same time, anti-competitive practices may raise barriers to entry and cause small and innovative competitors to exit early from the market.

To contribute to the digital transition, effective antitrust scrutiny of the behavior of market players, including platforms, as well as timely intervention need to be ensured in ICT markets. To make and keep markets open and competitive in line with the goals of the EU's digital agenda, enforcement must focus on safeguarding interoperability and competition between technological platforms, and on improving standard setting.

## **2.2. Contribution of EU competition policy to tackling the challenges**

### *2.2.1. Data and platforms*

On 20 January 2021, the Commission fined *Valve*, the owner of the online PC gaming platform Steam and five publishers *Bandai Namco*, *Capcom*, *Focus Home*, *Koch Media* and *ZeniMax*, a total of EUR 7.8 million for restricting cross-border sales of PC video games on the basis of customers' geographical location within the EEA ("geo-blocking")<sup>215</sup>. The fines for the publishers, totalling over EUR 6 million, were reduced because the companies cooperated with the Commission. Valve chose not to cooperate and was fined over EUR 1.6 million.

The Commission is ensuring that platforms do not access and use data in an anticompetitive manner. In that regard, the Commission is investigating Amazon's systemic reliance on non-public business data of independent sellers who offer their goods and services on its marketplace, to the benefit of Amazon's own retail business, which is in direct competition with those third party sellers. The Commission issued a Statement of Objections in the *Amazon Data* case on 10 November 2020<sup>216</sup> and the investigation is currently ongoing.

On 4 June 2021, the Commission opened a formal antitrust investigation to assess whether Facebook (now Meta) violated EU competition rules by using advertising data gathered in particular from advertisers in order to compete with them in markets where Meta is active such as classified ads<sup>217</sup>. The formal investigation will also assess whether Meta ties its online classified ads service "Facebook Marketplace" to its social network, in breach of EU

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<sup>215</sup> Cases AT.40413, *Focus Home*; AT.40414, *Koch Media*; AT.40420, *ZeniMax*; AT.40422, *Bandai Namco* and AT.40424, *Capcom*. See [https://ec.europa.eu/commission/presscorner/detail/es/ip\\_21\\_170](https://ec.europa.eu/commission/presscorner/detail/es/ip_21_170).

<sup>216</sup> Case AT.40462 - *Amazon Marketplace*; Commission Press Release, 10.11.2020, "Antitrust: Commission sends Statement of Objections to Amazon for the use of non-public independent seller data and opens second investigation into its e-commerce business practices", under "Statement of Objections on Amazon's use of marketplace seller data"; available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_2077](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2077).

<sup>217</sup> Case AT.40684 - *Facebook – leveraging*; Commission Press Release, 4.6.2021, "Antitrust: Commission opens investigation into possible anticompetitive conduct of Facebook"; available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_2848](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_2848).

competition rules. If proven, the practices under investigation may breach EU competition rules on anticompetitive agreements between companies (Article 101 TFEU) and/or on the abuse of a dominant position (Article 102 TFEU).

On 22 June 2021, the Commission formally opened an investigation under Articles 101 and/or 102 of the TFEU into a broad range of Google's advertising technology (ad tech) and data-related practices<sup>218</sup>. The Commission's decision to open the investigation was addressed to Google and its parent company Alphabet and concerns Google's role and use of data in online advertising and the provision of ad tech services, that is to say online intermediation services between advertisers and publishers for serving ads.

The investigation covers notably: (1) potential restrictions on competing ad tech services' ability to serve online display advertisements on YouTube and a potential obligation to use Google's services to programmatically purchase online display advertisements on YouTube, since at least 2015; (2) potential reciprocal favouring of Google's advertiser side and publisher side ad tech services, since at least 2010; (3) potential restrictions by Google on the ability of advertisers, publishers and competing online display advertising intermediaries to access data about user identity or user behaviour available to Google's own ad tech services, since at least 2012; (4) Google's announced plans to prohibit the placement of third party cookies on Chrome and to introduce as a replacement the "Privacy Sandbox" set of tools, at least since the plans were announced in January 2020; and (5) Google's announced plans to stop making the advertising identifier available to third parties on Android devices when a user opts out of interest-based advertising or advertisement personalisation, at least since the announcement was made in June 2021.

The Commission has also initiated three formal antitrust proceedings against Apple concerning Apple's rules on the distribution of apps that compete with Apple's own apps and services on Apple's App Store in the European Economic Area<sup>219</sup>. In the App Store Practices (music streaming) case in particular, the Commission has preliminary found that the requirements imposed by Apple distort competition on the music streaming market and constitute an abuse of Apple's dominant position in the market for distribution of music streaming apps to iPhone and iPad users<sup>220</sup>.

Further, the Commission is also looking into potential "self-preferencing" and discriminatory practices of digital "dual role" platforms. In particular, the Commission is investigating whether the criteria that Amazon sets to select the winner of the "Buy Box" and to enable sellers to offer products to Prime users, under Amazon's Prime loyalty programme, lead to preferential treatment of Amazon's retail business or of third-party sellers that use Amazon's logistics and delivery services<sup>221</sup>.

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<sup>218</sup> Case AT.40670 - *Google - Adtech and Data-related practices*; Commission Press Release, 22.6.2021, "Antitrust: Commission opens investigation into possible anticompetitive conduct by Google in the online advertising technology sector"; available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_3143](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3143).

<sup>219</sup> Case AT.40437 - *Apple - App Store Practices (music streaming)*; Case AT.40652 - *Apple App Store Practices (e-books/audiobooks)*; Case AT.40716 - *Apple - App Store Practices*.

<sup>220</sup> Case AT.40437 - *Apple - App Store Practices (music streaming)*; Commission Press Release, 30.4.2021, "Antitrust: Commission sends Statement of Objections to Apple on App Store rules for music streaming providers", available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_2061](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2061).

<sup>221</sup> Case AT.40703 - *Amazon - Buy Box*; Commission Press Release, 10.11.2020, "Antitrust: Commission sends Statement of Objections to Amazon for the use of non-public independent seller data and opens second investigation into its e-commerce business practices", under "Investigation into Amazon practices regarding its "Buy Box" and Prime label"; available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_2077](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2077).



In July 2020, the Commission launched the consumer Internet of Things (“IoT”) sector inquiry, based on Article 17 of Regulation 1/2003<sup>222</sup>, to better understand the IoT sector, its competitive landscape, developing trends and potential competition issues. On 9 June 2021, the Commission published its preliminary report on the IoT sector inquiry, setting out its initial findings and providing an overview of the main competition-relevant market trends identified<sup>223</sup>. The publication was followed by a public consultation during which stakeholders were able to comment on the initial findings of the sector inquiry. In January 2022, the Commission published the final report<sup>224</sup> and its accompanying Staff Working Document<sup>225</sup> in which it presented the findings of the sector inquiry, including a number of potential competition concerns, raised by stakeholders. Stakeholders have in particular raised concerns in relation to (i) certain exclusivity and tying practices for voice assistants, (ii) the position of voice assistants and smart device operating systems as intermediaries between users, on one side, and smart devices or consumer IoT services on the other side, (iii) the access to and accumulation of large amounts of data by voice assistant providers; and (iv) a lack of interoperability due to technology fragmentation and the prevalence of proprietary technology.

### **The Digital Markets Act**

The Digital Markets Act (DMA) legislative proposal was adopted by the Commission in December 2020 as a core piece of its European Digital Strategy. The proposal seeks to address the problems arising in digital markets, such as the gatekeeper power of large digital platforms. The DMA proposal establishes the relevant criteria to identify “gatekeepers” which fall within the Regulation. Where a platform meets the quantitative thresholds regarding (1) its size, (2) its active business users and end users, and (3) its entrenched and durable position, it will be presumed to be a gatekeeper until proof to the contrary. The Commission will also be able to designate gatekeepers individually upon qualitative assessment. Gatekeepers will be obliged to comply with a set of harmonized rules, which aim at keeping core platform services contestable and restrict unfair conduct vis-à-vis their business users, within six months upon identification as a gatekeeper. Fines of up to 10% of the company’s worldwide turnover as well as proportionate behavioural or structural remedies may be imposed to ensure the effective enforcement of the rules.

In November 2021 the Council agreed on its position (“general approach”) on the DMA proposal. In December 2021, the European Parliament voted by a large majority the text that constitutes its mandate for negotiations with the Council. A political agreement is expected in the first half of 2022. In parallel to the legislative negotiations, the Commission must prepare a number of implementing acts, templates for decisions, and set up internal procedures, including registry and IT systems.

<sup>222</sup> Case HT.5752 – Commission decision of 16.7.2020 initiating an inquiry into the sector for consumer Internet of Things related products and services pursuant to Article 17 of Council Regulation (EC) No 1/2003, available at: [https://ec.europa.eu/competition/antitrust/IoT\\_decision\\_initiating\\_inquiry\\_en.pdf](https://ec.europa.eu/competition/antitrust/IoT_decision_initiating_inquiry_en.pdf).

<sup>223</sup> The Preliminary Report is available here: [https://ec.europa.eu/competition-policy/system/files/2021-06/internet\\_of\\_things\\_preliminary\\_report.pdf](https://ec.europa.eu/competition-policy/system/files/2021-06/internet_of_things_preliminary_report.pdf).

<sup>224</sup> Report from the Commission to the Council and the European Parliament - Final report - sector inquiry into consumer Internet of Things COM (2022) 19 Final, 20 January 2022, available here: [https://ec.europa.eu/competition-policy/system/files/2022-01/internet-of-things\\_final\\_report\\_2022\\_en.pdf](https://ec.europa.eu/competition-policy/system/files/2022-01/internet-of-things_final_report_2022_en.pdf).

<sup>225</sup> Commission Staff Working Document – Report from the Commission to the Council and the European Parliament: Final report - Sector inquiry into consumer Internet of Things, SWD (2022) 10 final, 20.1.2022, available here: [https://ec.europa.eu/competition-policy/system/files/2022-01/internet-of-things\\_final\\_report\\_2022\\_staff\\_working\\_document\\_0.pdf](https://ec.europa.eu/competition-policy/system/files/2022-01/internet-of-things_final_report_2022_staff_working_document_0.pdf).

### 2.2.2. Cross-border access to content

On 9 December 2020, the CJEU<sup>226</sup> set aside the General Court's earlier, confirmatory judgment<sup>227</sup>, and annulled the Commission's decision of 26 July 2016, which made binding commitments offered by one of the studios (Paramount) in the pay-TV investigation. Since the Commission also made essentially identical commitments binding on the remaining studios (Disney, NBCUniversal, Sony Pictures, Warner Bros.) and the broadcaster Sky by its decision of 7 March 2019, the Commission decided to withdraw that decision and close the antitrust proceedings on 31 March 2021<sup>228</sup>. The pay-TV investigation related to certain clauses in licensing contracts for pay-TV between six major film studios and Sky UK. Such clauses restricted Sky UK's ability to accept unsolicited requests from consumers located outside the UK and Ireland, eliminating cross-border competition and rendering more difficult cross-border access to audio-visual content. Both judgments confirmed the Commission's interpretation of Article 101(1) TFEU and indicate that the geo-blocking clauses at issue create absolute territorial protection and thus have as their object the restriction of competition. Moreover, the General Court's judgement supports the Commission's view that such clauses would not be exempted under Article 101(3) TFEU, because they are not indispensable.

### 2.2.3. Technology Markets

The Commission's actions in technology markets aim at keeping markets competitive and maximising incentives to innovate. In this context, the Commission has continued monitoring compliance with its decisions in the *Google Search (Shopping)* and *Google Android* cases.

#### **The Google Search (Shopping) case**

On 10 November 2021, the General Court largely upheld the Commission's Decision of 27 June 2017 in the Google Search (Shopping) case, concluding that Google abused its market dominance in general search by treating its own comparison shopping service more favourably than competing comparison shopping services<sup>229</sup>. Google was displaying its own service prominently at or near the top of the first search results page, irrespective of how good or relevant it was, while rival services were demoted to page four or lower, where they were not even seen. The judgment delivers the clear message that Google's conduct was unlawful and it provides the necessary legal clarity for the market. In particular, the Court confirmed a number of important principles outlined in the Commission's Decision such as the anticompetitive nature of the practice at issue, the Commission's finding of harmful effects on competition and the lack of any objective justification for Google's conduct. The Court also upheld the fine of EUR 2.42 billion imposed on Google. Google has filed an appeal to the CJEU.

On 2 August 2021 the Commission opened an in-depth investigation on the proposed acquisition of Kustomer, a Customer Relationship Management (CRM) software provider, by Meta (previously Facebook). Following its in-depth investigation, the Commission had concerns that the transaction, as initially notified, would have harmed competition in the market for the supply of CRM software and the market for the supply of customer service and support CRM software. In particular, Meta might foreclose access to its business-to-consumer

<sup>226</sup> Judgment of the Court of Justice of 9.12.2020, C-132/19 P, *Groupe Canal + v Commission*, EU:C:2020:1007.

<sup>227</sup> Judgment of the General Court of 12.12.2018, T-873/16, *Groupe Canal + v Commission*, EU:T:2018:904.

<sup>228</sup> Case AT. 40023 - *Cross-border access to pay-TV*, Commission Decision of 31.3.2021 withdrawing Decision C (2019) 1772 final of 7.3.2019 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union (TFEU) and Article 53 of the EEA Agreement.

<sup>229</sup> Judgment of the General Court of 10.11.2021, T-612/17, *Google LLC and Alphabet, Inc. v European Commission*, EU:T:2021:763.

messaging channels, namely WhatsApp, Messenger or Instagram, which constitute an important input for suppliers of CRM software services. To address the competition concerns identified by the Commission, Meta offered comprehensive access commitments with a 10-year duration, namely a public API access commitment and a core API access -parity commitment, with a trustee, to be appointed before the transaction would close, to monitor the implementation of the commitments. In view of this, the Commission on 27 January 2022 approved the proposed acquisition of Kustomer by Meta, conditional on full compliance with the commitments offered by Meta<sup>230</sup>.

On 30 June 2021 the Commission cleared the acquisition of Xilinx by Advanced Micro Devices (AMD), both global semiconductor companies based in the US. The Commission focused on possible conglomerate effects with regard to AMD's central processing units (CPUs) and graphic processing units (GPUs) and Xilinx's field-programmable gate arrays, concluding that the transaction does not raise competition concerns given the lack of ability and incentive to foreclose rival providers of CPUs and GPUs.

On 27 October 2021, the European Commission opened an in-depth investigation to assess the proposed acquisition of Arm, a supplier of core architecture and intellectual property (IP) to chipmakers for the design of processing units, by NVIDIA, a global supplier of semiconductors<sup>231</sup>. In its preliminary investigation, the Commission had found that Arm has significant market power on the upstream market for the licensing of IP for the design of processor products. Therefore, the Commission raised serious concerns that the merged entity would have the ability and incentive to restrict or degrade access to Arm's IP by providers of processor products that compete with NVIDIA downstream, leading to higher prices, less choice and reduced innovation in the semiconductor industry. On 8 February 2022, NVIDIA informed the Commission that it withdrew its notification and demonstrated that it abandoned the concentration<sup>232</sup>.

On 21 December 2021, the Commission approved the acquisition of Nuance, a US software company offering transcription technology, with a focus on the healthcare sector, by Microsoft, a global technology company. The transaction, aiming at facilitating Microsoft's entry into the healthcare space, mainly gave rise to conglomerate relationships between Nuance's transcription software and Microsoft's provision of productivity software, enterprise communication services and PC operating systems. The Commission concluded that the proposed transaction would raise no competition concerns on any of the markets examined in the EEA and cleared the case unconditionally<sup>233</sup>.

#### *2.2.4. Telecommunication sector*

European consumers must be able to benefit from increased choice in the telecommunication sector thanks to low prices, high quality and innovative services. The fast and efficient roll-out of 5G, ensuring the European industry's competitiveness in an increasingly digital society, is a key priority for the Commission. Network sharing agreements can be a source of efficiencies - such agreements can facilitate the roll-out of advanced technological solutions by reducing costs. However, not all network sharing arrangements are beneficial and potential anti-competitive effects have to be carefully assessed in order to avoid harm to competition

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<sup>230</sup> Case M.10262 - *Meta (formerly Facebook) / Kustomer*.

<sup>231</sup> Case M.9987 - *NVIDIA / Arm*.

<sup>232</sup> OJ C 85, 22.2.2022, p. 2.

<sup>233</sup> Case M.10290 - *Microsoft / Nuance*.

and possible consumer harm.

In 2021 the Commission continued its investigation into a mobile network-sharing agreement between the two largest operators in Czechia, O2/CETIN and T-Mobile. Following on from the issuance of a Statement of Objections in 2019, on 27 August 2021 the Commission adopted a preliminary assessment which set out the concerns that the Commission continued to have as regards the negative effects on competition of the sharing agreement. The key concerns set out related to the reduction in the ability and incentives of T-Mobile and O2 to unilaterally invest in network infrastructure, in particular through technological hold-back, financial disincentives and information exchange. The parties offered commitments to meet the Commission's competition concerns. The commitments relate to certain hardware upgrades, certain financial conditions for unilateral deployments and further restrictions on information exchange<sup>234</sup>. The offered commitments were market tested until 1 November 2021<sup>235</sup>.

On 28 July 2021, the European Commission approved the acquisition of Telekom Romania Communications (TKR) by Orange, of which provide wholesale and retail telecommunication services in Romania. The approval was conditional on the divestiture of TKR's 30% minority shareholding in Telekom Romania Mobile Communications (TRMC), one of the main mobile operators in Romania. The Commission found that the transaction would have raised serious competition concerns, as Orange would have acquired TKR's 30% minority shareholding in TRMC, one of Orange's key competitors at retail level. This may have reduced Orange's incentives to compete with TRMC and allowed it to block important investments by TRMC. The Commission found that the divestment of TKR's 30% minority shareholding in TRMC fully removes the competition concerns identified in the market for retail mobile telecommunications services<sup>236</sup>.

On 10 November 2021, the European Commission approved the acquisition of joint control of Open Fiber, a wholesale-only operator developing an optical fibre network in Italy, by Cassa Depositi e Prestiti (CDP), controlled by the Italian State, and Macquarie Group Limited, a multinational investment bank<sup>237</sup>. The transaction raised no horizontal or vertical relationships between the activities of Macquarie and Open Fiber, which was already jointly controlled by CDP (together with Enel). The Commission assessed whether the Transaction was interrelated with the potential creation, announced by CDP and TIM, the Italian telecommunications incumbent, of a single fixed network in Italy, and should therefore be treated as a single concentration. The Commission concluded that the two transactions were independent of each other. Finally, the Commission also assessed whether the transaction would increase the risks of coordination between Open Fiber and TIM, in which CDP has minority interests, and concluded that possible concerns in this regard are not specific to the transaction.

Other significant developments in the telecoms sector include the judgments rendered by the CJEU in the *Deutsche Telekom and Slovak Telekom* cases<sup>238</sup>. These judgments confirm that

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<sup>234</sup> Case AT.40305 - *Network sharing - Czech Republic*.

<sup>235</sup> Communication from the Commission published pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 in Case AT.40305 - *Network Sharing - Czech Republic*, OJ C 398, 1.10.2021, p. 24–27.

<sup>236</sup> Case M.10153 - *Orange / Telekom Romania Communications*.

<sup>237</sup> Case M.10450 – *CDP / Macquarie / Open Fiber*.

<sup>238</sup> Judgments of the Court of Justice of 25.3.2021, C-152/19 P, *Deutsche Telekom*, EU:C:2021:238 and C-165/19 P, *Slovak Telekom*, EU:C:2021:239, which fully upheld the General Court's judgments of 13.12.2018 in cases T-827/14 and T-851/14.

where a dominant undertaking gives access to its infrastructure but makes that access subject to unfair conditions, this behaviour can amount to an abuse<sup>239</sup>.

#### 2.2.5. Media

On 22 December 2021, the Commission approved the acquisition of Warner Media by Discovery, both US companies active across the audio-visual (AV) value chain. The Commission's investigation focused on a number of horizontal, vertical and conglomerate relationships between the parties' activities in various Member States, mainly concerning the markets for the wholesale supply of TV channels and the retail supply of AV services. The Commission concluded that the proposed acquisition would raise no competition concerns given that, following the transaction, the combined entity would continue to face sufficient competition from other players. In addition, the Commission found no competition concerns stemming from the vertical and conglomerate links between the activities of the companies, since the latter would not have the ability nor the incentive to engage in foreclosure practices<sup>240</sup>.

In 2021, the Commission dealt with a large number of State aid cases in the news media sector. Particular attention was paid to the fact that media play a key role for democracy, where support should be provided in a way that respects and promotes quality independent journalism, media freedom and pluralism<sup>241</sup>. The Commission has continued its policy work to sustain a free and independent media sector. Similarly, aid to film production remains an important tool to sustain the cultural diversity of the EU in the audio-visual sector. As aid to the media may also be granted under the Recovery and Resilience Facility (RRF), the Commission developed a template to guide Member States on how to apply State aid rules and procedures to aid for digitalisation of news media<sup>242</sup>.

#### 2.2.6. Facilitating the Digital Transition

High quality electronic communications infrastructure is crucial for social cohesion and a competitive and sustainable economy, therefore State aid control in the electronic communications sector, including aid for broadband rollouts, plays an important role in developing a coordinated investment strategy and reaching the digital transition goals.

A public consultation on the evaluation<sup>243</sup> of the 2013 Guidelines for State aid to

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<sup>239</sup> The conditions laid down by the Court of Justice in its judgment of 26.11.1998, C-7/97, *Bronner*, EU:C:1998:569, paragraph 41, do not apply in this type of situation. The judgments also confirm the Commission's assessment that Deutsche Telekom and Slovak Telekom were part of the same economic entity and that, as a parent company, Deutsche Telekom was therefore jointly and severally liable for Slovak Telekom's abusive behaviour.

<sup>240</sup> Case M.10343 – *Discovery / WarnerMedia*.

<sup>241</sup> As set out in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions On the European democracy action plan, 3.12.2020, COM(2020) 790 final, and in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Europe's Media in the Digital Decade: An Action Plan to Support Recovery and Transformation, 3.12.2020, COM(2020) 784 final.

<sup>242</sup> [https://ec.europa.eu/competition-policy/system/files/2021-04/template\\_RRF\\_digitalisation\\_of\\_news\\_media.pdf](https://ec.europa.eu/competition-policy/system/files/2021-04/template_RRF_digitalisation_of_news_media.pdf).

<sup>243</sup> State aid: Commission invites comments on State aid rules for the deployment of broadband networks, available at: [https://ec.europa.eu/competition/consultations/2020\\_broadband/index\\_en.html](https://ec.europa.eu/competition/consultations/2020_broadband/index_en.html) and <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12398-Evaluation-of-State-Aid-rules-for-broadband-infrastructure-deployment>.

Broadband<sup>244</sup> came to an end in January 2021. To ensure that the Broadband Guidelines are aligned with technological and economic developments and take into account evolving connectivity objectives, in November 2021, the Commission launched a public consultation on draft for revised Broadband Guidelines<sup>245</sup>, with the aim to adopt them in the course of 2022.

In July 2021, the Commission adopted an extension of the scope of the GBER<sup>246</sup>, which concerns, among others, certain State aid measures that support the digital transition, notably aid for fixed and mobile broadband networks, as well as connectivity vouchers. This new GBER extension will also facilitate the co-financing with State aid of certain projects of common interest in the area of trans-European digital connectivity infrastructure financed under Regulation (EU) 2021/1153 or awarded a Seal of Excellence quality label under that Regulation.

Measures within the Recovery and Resilience Facility (RRF) have to comply with the State aid framework for State aid measures to support the economy in the current COVID-19 outbreak and be notified to the Commission unless they fall under the GBER or an existing authorized scheme. To facilitate the Member States' State aid assessment, the Commission provided guidance on State aid to broadband connectivity in the form of a template on measures to support the deployment and take-up of fixed and mobile very high capacity networks, including 5G and fibre networks<sup>247</sup>.

### 3. FINANCIAL SERVICES

#### 3.1 Overview of key challenges in the sector

Throughout 2021, financial services markets continued to be characterised by a rapid pace of technological and regulatory changes. The Commission's intervention in the sector aims at ensuring that consumers and merchants are able to benefit fully from these developments. All instruments of EU competition policy contribute to maintaining and promoting strong competition in markets for financial services and protecting customers and innovation, while preventing systemic risks to the economy.

EU legislation, and in particular the implementation of the Interchange Fee Regulation<sup>248</sup> and the revised Payment Services Directive<sup>249</sup> aim at spurring more competition and innovation in the payments sector, to the benefit of consumers and merchants. Many payment services are characterized by network effects. As a result, distortions of competition by companies or Member States can produce particularly severe effects such as preventing innovative competitors from entering, or pushing them to exit from the market prematurely. It is therefore important to prevent or remedy such distortions.

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<sup>244</sup> Communication from the Commission: EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, OJ C 25, 26.1.2013, p. 1-25.

<sup>245</sup> [https://ec.europa.eu/competition-policy/public-consultations/2021-broadband\\_en](https://ec.europa.eu/competition-policy/public-consultations/2021-broadband_en).

<sup>246</sup> Commission Regulation (EU) 2021/1237 of 23.7.2021 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (Text with EEA relevance), OJ L 270, 29.7.2021, p. 39–75.

<sup>247</sup> [https://ec.europa.eu/competition-policy/system/files/2021-04/template\\_RRF\\_broadband\\_roll\\_out\\_and\\_demand\\_side\\_measures\\_0.pdf](https://ec.europa.eu/competition-policy/system/files/2021-04/template_RRF_broadband_roll_out_and_demand_side_measures_0.pdf).

<sup>248</sup> Regulation (EU) 2015/751 of the European Parliament and of the Council of 29.4.2015 on interchange fees for card-based payment transactions, OJ L 123, 19.5.2015, pp. 1–15.

<sup>249</sup> Directive (EU) 2015/2366 of the European Parliament and of the Council of 25.11.2015 on payment services in the internal market, OJ L 337, 23.12.2015, pp. 35–127.



New players regularly emerge or continue their development across financial markets, including large technology companies, such as Apple or Alphabet (Google), but also smaller or more innovative providers, in particular FinTech companies, which aim at enhancing the provision of financial services by bringing in technological innovation. This trend covers most financial services markets, including banking, payments and insurance. Digital technology and FinTech companies have also continued to facilitate access to EU capital markets for investors and the Commission pursued its objective to create a smooth functioning Capital Markets Union in 2021. The development of cryptocurrencies raises a number of regulatory challenges, including possible competition issues. Most of the regulatory issues are being addressed by Commission legislative initiatives, which also take into account potential competition concerns, such as the Commission proposal for a Regulation on Markets in Crypto-Assets (MiCa)<sup>250</sup> which seeks to regulate and supervise crypto-assets. The Commission will continue to monitor market developments concerning crypto-assets, as well as digital wallets for related payment and money transfers, such as Facebook's digital wallet Novi, to ensure timely antitrust assessment of their impact for the payment sector and consumer welfare.

Incumbent players in the financial industry, including card schemes, banks and traditional insurers or brokers remain key players in the financial value chains. Throughout 2021, the Commission has thoroughly investigated consolidation, cooperation and even coordination among traditional market players. The Commission also reviewed aid schemes to banks and other traditional financial institutions.

Access to cheap and reliable financial data is also a key challenge for the industry, as such data ensures the fairness of market prices and systemic stability. Major policy initiatives and commercial strategies aiming to encourage a stronger shift towards sustainable investment through clearer indications of firms' environmental, social and corporate governance records have further emphasised the need for fair and non-discriminatory access to financial market data such as ESG indices. All of these developments have demonstrated the essential nature of qualitative proprietary market data on which the Capital Market Union relies. In turn, this has reinforced the need to ensure that the EEA data markets are free of anti-competitive behaviours, and that concentrations in the field are carefully scrutinised.

The decision by the G20 and competent regulatory authorities to cease the publication of IBORs (starting with certain LIBOR rates at the end of 2021) to favour reliance on alternative "risk free" rates, has induced a number of international financial organisations to develop mechanisms to facilitate this transition. In particular, they have convened their members and launched consultations in order to design fall-back rates to apply to IBOR based legacy contracts. These voluntary fall-backs seek to facilitate the needed renegotiation and adjustment of the many thousands of such legacy contracts whose terms extend beyond the announced IBOR cessation dates. The fall-back design processes must be undertaken in compliance with EU competition law.

In 2021, the COVID-19 pandemic continued to impact financial services markets. In particular:

- In the banking sector, the wide range of aid schemes set-up by the Member States and approved by the Commission to support the real economy contributed to shielding EU

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<sup>250</sup> Proposal for a Regulation on Markets in Crypto-assets amending Directive (EU) 2019/1937, 24.9.2020, COM (2020) 593 final.

banks from a severe downturn.

- In the insurance sector, the COVID-19 pandemic has continued to create pressure on certain lines of insurance notably those related to health and business continuity. In addition to the COVID-19 pandemic, climate change and an increasing number of severe weather events as well as increasing levels of cybercrime are affecting the insurance sector. These developments may give rise to the need for cooperation in the sector, which however must be compliant with EU competition law.
- In the payments sector, retail payments have increasingly turned digital and contactless. The trend towards an increased use of digital and contactless payments in-store and online which accelerated at the start of the pandemic continued throughout the year, strengthening the market position of companies offering such payment services.

### **3.2 Contribution of EU competition policy to tackling the challenges**

#### *3.2.1. Contribution of EU competition policy to innovation and fairness in payments*

In 2021, the Commission continued its monitoring of the application of the Interchange Fee Regulation (IFR)<sup>251</sup>.

The Commission's Report to the European Parliament and the Council on the application of the IFR of 29 June 2020<sup>252</sup> concluded that the IFR has achieved its main objectives and did not identify a need for legal revision. Following the IFR Hearing on 7 December 2020 which allowed additional stakeholders' and national competent authorities' views to be collected, the Commission continued market monitoring in 2021 on the basis of voluntary questionnaires to stakeholders, related in particular to recent scheme fees trends and possible circumvention of the interchange fees capped by the IFR.

#### *3.2.2. Antitrust and cartel investigations in the financial services sector*

In 2021, the Commission sanctioned three new cartels in the financial sector, imposing overall fines of EUR 740 million on 16 different financial institutions.

In April and May 2021, the Commission fined a number of investment banks a total of EUR 28.494 million for being part of a sovereign and agency bonds trading cartel<sup>253</sup> and EUR 371 million for participating in a cartel trading European Government Bonds<sup>254</sup>.

In particular, with regard to the first case, the Commission found that Bank of America Merrill Lynch, Crédit Agricole, Credit Suisse and Deutsche Bank took part in a cartel relating to Supra-sovereign, Sovereign and Agency (SSA) bonds denominated in US Dollars. The four investment banks participated in the cartel through a core group of traders that exchanged commercial sensitive information, usually on multilateral or bilateral chatrooms on Bloomberg terminals.

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<sup>251</sup> Regulation (EU) 2015/751 of the European Parliament and of the Council of 29.4.2015 on interchange fees for card-based payment transactions, OJ L 123, 19.5.2015, pp. 1–15.

<sup>252</sup> Report on the application of Regulation (EU) 2015/751 on interchange fees for card-based payment transactions of 29.6.2020, SWD (2020), 118 final.

<sup>253</sup> Case AT.40346 - *Sovereign and Agency bonds*.

<sup>254</sup> Case AT.40324 - *European Governments Bonds*.

As for the second case, the Commission found that Bank of America, Natixis, Nomura, RBS (now NatWest), UBS, UniCredit and WestLB (now Portigon) engaged in a cartel related to the primary and secondary market for European Government Bonds ('EGB'). They investment banks participated in the cartel through a group of traders who exchanged commercially sensitive information, mainly in multilateral chatrooms on Bloomberg terminals. The overall aim of the collaboration between the group's traders was to help each other in their operation on the market by increasing transparency and reducing uncertainties regarding the issuing and/or trading of EGB.

In both cases, the Commission was able to confirm anticompetitive behaviour even though operators were exchanging sensitive information, coordinating prices and aligning their trading activities through sophisticated technological tools, such as multilateral or bilateral chat rooms on a specific platform for financial intermediaries.

Moreover, in December 2021, the Commission completed its cartel investigation into the foreign exchange ('Forex') spot trading market by imposing fines totalling EUR 344 million on UBS, Barclays, RBS, HSBC and Credit Suisse<sup>255</sup>. The Commission's investigation revealed that some traders in charge of the Forex spot trading of G10 currencies, acting on behalf of the fined banks, exchanged sensitive information and trading plans, and occasionally coordinated their trading strategies through an online professional chatroom called 'Sterling Lads'. Barclays, HSBC, RBS and UBS acknowledged their involvement in the cartel and agreed to settle the case. The decision against Credit Suisse was adopted on the same day under the normal procedure (a so-called 'parallel hybrid' settlement procedure).

In 2021, the Commission also intensified its monitoring as regards competition in the EEA markets for proprietary financial market data in light of informal complaints against incumbent primary suppliers allegedly applying abusive licensing practices. The decision of international financial regulators to require financial contracts to be based on so-called risk free rates and the cessation of the publication of certain LIBORs at the end of 2021 have given rise to calls for guidance to ensure that "fall-back" design and roll out processes comply with EU competition law. As the Commission recognises that these voluntary fall-backs can play a key role in ensuring a smooth transition to alternative rates for the vast number of affected legacy contracts, it is willing to engage with organisations involved in designing such fall-back systems to allow them to determine how to ensure that they comply with EU competition law, while continuing monitoring the financial markets that currently rely on IBORs.

In the field of motor insurance, in 2021 the Commission continued its investigation into the conditions of access to the Insurance Link data pooling system administered by Insurance Ireland. On 18 June 2021, the Commission sent a Statement of Objections<sup>256</sup> to Insurance Ireland, presenting its preliminary concerns that Insurance Ireland arbitrarily delayed or *de facto* denied access to the data pooling system to companies that had a legitimate interest in joining it, and that hurdles remain in place that might affect companies seeking to enter the Irish motor insurance market. This may have the effect of placing these companies at a competitive disadvantage on the Irish motor insurance market in comparison to companies already having access to the database.

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<sup>255</sup> Case AT.40135 – FOREX.

<sup>256</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_3081](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3081)

In 2021, the Commission continued its in-depth investigation as a matter of priority to determine whether there has been a breach of EU competition rules by Apple in connection with Apple Pay<sup>257</sup>. The investigation concerns Apple's terms, conditions and other measures for integrating Apple Pay in merchant apps and websites on iPhones and iPads, Apple's limitation of access to the Near Field Communication (NFC) functionality ("tap and go") on iPhones for payments in stores, and alleged refusals of access to Apple Pay. Apple Pay is a digital mobile wallet operating on Apple (iOS) devices. Based on the Commission's preliminary fact-finding, Apple appears to have engaged in practices that may distort competition among providers of digital mobile wallets and reduce choice and innovation.

### *3.2.3. Merger investigations in the financial sector*

The Commission continued to ensure that concentrations in the financial sector do not lead to higher prices, lower quality products or services, or less innovation for consumers. The Commission assessed transactions across a variety of markets, including in particular payment services, financial data, and insurance provision and distribution.

On 8 July 2021, the Commission unconditionally approved the creation of the P27 joint venture and its acquisition of Bankgirot, by six Nordic banks<sup>258</sup>. P27 aims at building the world's first real-time, cross-border and cross-currency payment system, covering multiple Nordic countries. The Commission found that the transaction would not raise competition concerns, as the number of providers available would not be reduced, and the applicable regulatory requirements would prevent P27 and the parent banks from foreclosing other players.

Following an in-depth investigation opened on 21 December 2020, the Commission conditionally approved the proposed acquisition of Willis Towers Watson by Aon<sup>259</sup> on 9 July 2021. The Commission found that the transaction as initially notified would have significantly impeded competition in the markets for: (i) commercial risk brokerage services to large multination customers based in the EEA for the risk classes concerning property & casualty, financial and professional, and cyber risk; (ii) commercial risk brokerage services to customers for space and aerospace manufacturing risks; (iii) commercial risk brokerage in national markets in the Netherlands and Spain; (iv) non-life treaty and facultative reinsurance brokerage services globally; and (v) pension administration services to companies in relation to pension schemes offered to their employees for the market in Germany.

To address the Commission's concerns, Aon committed to divest to rival insurance broker Gallagher the entire commercial risk brokerage country organisations of Willis Towers Watson in France, Germany, Spain and the Netherlands, Willis Towers Watson's cyber risk brokerage business in the UK, a substantial set of additional customer contracts and personnel in a number of EEA countries and internationally, Willis Towers Watson's entire brokerage business for the risk classes space and aerospace manufacturing; and Willis Towers Watson's entire global treaty reinsurance and facultative reinsurance brokerage organisation. Aon also committed to divest to a suitable purchaser Aon's entire German retirement benefits consulting and pension administration businesses, as well as Aon's German investment solutions business.

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<sup>257</sup> Case AT.40452 - *Apple - Mobile payments*.

<sup>258</sup> Case M.9971 - *P27 NPP / Bankgirot*.

<sup>259</sup> Case M.9829 - *Aon / Willis Towers Watson*.

On 22 October 2021, the Commission authorised the acquisition of IHS Markit by S&P Global<sup>260</sup>, both active in the provision of financial data and other financial services, subject to the parties' commitments to divest businesses in: (i) commodity price assessments, (ii) identifiers, (iii) financial indices and (iv) leveraged loan market intelligence. The Commission was concerned that the transaction would otherwise have created or strengthened a dominant position in these markets or would otherwise have harmed competition by leading to higher prices and less choice for customers.

On 29 October 2021, the Commission announced the opening of an investigation into a possible breach of Article 21 of the EU Merger Regulation by Hungary. Hungary had vetoed the acquisition of the two Hungarian subsidiaries of AEGON by VIG, both active in the insurance sector, even though the transaction (including the acquisition of AEGON's businesses in Romania and Poland) had already been unconditionally approved by the Commission on 12 August 2021<sup>261</sup>.

### *3.2.4. State aid investigations in the financial sector*

In 2021, for the second year in a row, there were no new individual cases of State aid to financial institutions. This confirms that the EU banking sector has largely overcome the previous financial crisis and so far has managed to withstand the COVID-19 pandemic, also due to the wide range of aid schemes set-up by the Member States to support the real economy and approved by the Commission under the Temporary Framework for State aid measures, thus indirectly shielding banks from the consequence of a deep downturn.

Nevertheless, in 2021 the Commission authorised the prolongation of already existing schemes under which Member States can provide aid to foster the restructuring or orderly market exit of entities in distress in case of need.

For Poland, the Commission authorised the extension of both the scheme for the liquidation of credit unions (in place since February 2014)<sup>262</sup> and the scheme for the resolution of cooperative and small commercial banks (in place since December 2016)<sup>263</sup>. The Commission also approved the prolongation of the wind-down of the Polish "Bank Nowy BFG", resulting from the resolution of the cooperative bank, Podkarpacki Bank Spółdzielczy, of January 2020<sup>264</sup>.

For Ireland, the Commission authorised two prolongations of the restructuring scheme for credit unions (in place since October 2014)<sup>265</sup> and the extension of the orderly winding-up scheme for credit unions (in place since December 2011)<sup>266</sup>.

For Denmark, the Commission approved the prolongation of the orderly winding-up scheme for small banks (in place since August 2017)<sup>267</sup>.

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<sup>260</sup> Case M.10108 - S&P Global / IHS Markit.

<sup>261</sup> Case M.10102 - VIG / AEGON CEE.

<sup>262</sup> Case SA.63002 – Poland - Eleventh prolongation of the Credit Unions Orderly Liquidation Scheme.

<sup>263</sup> Case SA.64522 – Poland - Sixth prolongation of the resolution scheme for cooperative banks and small commercial banks.

<sup>264</sup> Case SA.63965 – Poland - Deferral of the formal liquidation of Bank Nowy BFG.

<sup>265</sup> Cases SA.62303 – Ireland- 13th prolongation of the Credit Union restructuring and stabilisation scheme; SA.100030 – Ireland - 14th Prolongation of the Restructuring and Stabilisation Scheme for the Credit Union Sector.

<sup>266</sup> Case SA.62649 – Ireland - 17th prolongation of the Credit Union Resolution Scheme 2020-2021.

The Commission also approved the prolongation of a bank guarantee scheme (in place since November 2008) to address potential challenges related to banks' liquidity situation in Greece<sup>268</sup>.

The Commission also authorised indirect aid to financial institutions in schemes primarily geared at providing social support to vulnerable households at risk of losing their home due to difficulties in mortgage repayments. In Cyprus, the Commission authorised a new such scheme ("OIKIA")<sup>269</sup>, while in Greece, it authorised the prolongation of an existing scheme, approved in 2019<sup>270</sup>. In both cases, the schemes set strict eligibility criteria in terms of the value of the primary residence and income of the borrower to ensure support is targeted at those most in need.

In addition, the Commission approved the prolongation of market-consistent guarantee schemes for the securitisation of non-performing loans (NPLs). Through these schemes, Member States are allowed to help banks clean up their balance sheets without granting aid or distorting competition. For Greece, the Commission allowed the prolongation of the Hellenic Asset Protection Scheme ("Hercules"), in place since October 2019<sup>271</sup>. For Italy, the Commission allowed the prolongation of the *Fondo di Garanzia sulla Cartolarizzazione delle Sofferenze* ("GACS"), in place since February 2016<sup>272</sup>.

The Commission also found that Sweden's legislative proposal to introduce a risk tax on large credit institutions did not constitute State aid<sup>273</sup>.

To complement commercial financing provided by lending institutions or investment funds, Member States can support young SMEs and start-ups typically suffering from limited access to finance to grow and develop their full potential in the face of asymmetric information available to investors. These measures can either be directly implemented by Member States if they fall under the GBER<sup>274</sup>, or structured as notifiable schemes under the Guidelines on State aid to promote risk finance investments (Risk Finance Guidelines)<sup>275</sup>. In this respect, the Commission approved in 2021 a modification of the existing risk finance scheme in France (for the period 2020-2025)<sup>276</sup>. The Commission also approved a pricing methodology for market-conform guarantees to be provided by the Portuguese development bank (*Banco Português de Fomento*) to small- and medium-sized enterprises<sup>277</sup>. By decision of 2

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<sup>267</sup> Case SA.58478, Denmark – Third prolongation of the winding-up scheme for small banks.

<sup>268</sup> Case SA.59030 – Greece - Prolongation of the Liquidity Guarantee Scheme for banks.

<sup>269</sup> Case SA.63005 – Cyprus - Scheme for the management of loans granted under Government Housing Plans (OIKIA Scheme).

<sup>270</sup> Case SA.100197 – Greece - Extension of SA.58555 "Temporary primary residence protection scheme".

<sup>271</sup> Case SA.62242 – Greece - Prolongation of the Hercules scheme.

<sup>272</sup> Case SA.62880 – Italy - Fourth prolongation of the Italian guarantee scheme for the securitisation of non-performing loans.

<sup>273</sup> Case SA.56348 – Sweden - Swedish tax on credit institutions.

<sup>274</sup> Commission Regulation (EU) No 651/2014 of 17.6.2014, OJ L 187 26.6.2014, p. 1, as amended.

<sup>275</sup> Communication from the Commission — Guidelines on State aid to promote risk finance investments, OJ C 19, 22.1.2014, p. 4, as prolonged.

<sup>276</sup> Case SA.59985 – France - Modification de la décision Aide d'État SA. 55869 (2019/N) : Dispositif IR-PME pour les investissements dans les FCPI et FIP.

<sup>277</sup> Case SA.61340 – Portugal - Pricing model proposed for guarantee schemes under the SNGM (Sistema Nacional de Garantia Mutua).



December 2021, the Commission approved a EUR 11.2 million capital increase for the Fund Manager of Financial Instruments in Bulgaria (FMFIB)<sup>278</sup>.

In July 2021, the Commission widened the scope of the General Block Exemption Regulation to cover aid granted through national funds for projects also supported by certain EU centrally managed programmes (primarily the InvestEU programme), and aid to support the twin transition to a green and digital economy that will also help the recovery from the effects of the COVID-19 pandemic<sup>279</sup>.

Moreover, following a stakeholders' consultation on the draft revised rules<sup>280</sup>, the Commission adopted on 6 December 2021 both the revised Short-term export credit insurance (STEC) Communication<sup>281</sup> and the Risk Finance Guidelines<sup>282</sup>. In particular, the new Risk Finance Guidelines introduce simplified requirements for the assessment of schemes targeting exclusively start-ups and SMEs before their first commercial sale and clarify the level of evidence required to demonstrate a specific market failure or other relevant obstacle to access to finance.

Finally, the Commission has announced its plans to launch an evaluation of the State aid rules for banks in difficulty in 2022<sup>283</sup>, in the broader context of the review of the crisis management and deposit insurance framework launched by the Commission in 2021.

## **4. BASIC INDUSTRIES AND MANUFACTURING**

### **4.1 Overview of key challenges in the sector**

Making up more than 20% of the EU's economy, manufacturing is a driver of growth and innovation and employs around 35 million people, that is to say more than 20% of the EU workforce. The two million companies active in the sector face substantial challenges, in the form of trade tensions, the introduction of advanced technologies and the need to radically adapt their practices to make them climate friendly. This has been exacerbated by the COVID-19 pandemic, which has led to disruptions in supply chains, price increases, difficulties in sourcing raw materials and components as well as substantial changes in both working practices and demand patterns.

The RRF along with the European Green Deal and a New Industrial Strategy for Europe, aim to address these challenges by supporting the competitiveness of the EU businesses and boosting investment during the recovery from the pandemic and the transition to a digitalised and clean economy. Enforcing antitrust and merger rules in the manufacturing and basic industries sectors contributes to this transformation, in particular by ensuring that innovation is not hampered and that firms can compete on fair and equal terms. Meanwhile, the application of State aid rules ensures that purely national interests do not distort competition,

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<sup>278</sup> Case SA.61100 – *Bulgaria - FMFIB Capital Increase*.

<sup>279</sup> See Commission Press Release, 23.7.2021, available at:

[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_3804](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3804).

<sup>280</sup> See [https://ec.europa.eu/competition-policy/public-consultations/2021-revision-stec\\_en](https://ec.europa.eu/competition-policy/public-consultations/2021-revision-stec_en) and [https://ec.europa.eu/competition-policy/public-consultations/2021-risk-finance\\_en](https://ec.europa.eu/competition-policy/public-consultations/2021-risk-finance_en).

<sup>281</sup> Communication from the Commission on the application of Article 107 and 108 of the Treaty on the Functioning of the European Union to short-term export credit insurance, OJ C 497, 10.12.2021, p. 5–13.

<sup>282</sup> Communication from the Commission, Guidelines on State aid to promote risk finance investments, OJ C 508, 16.12.2021, p. 1–36.

<sup>283</sup> See Annex of COM(2021) 713 final of 18.11.2021.

that loss-making companies are not kept artificially alive with continuous public funding to the detriment of more efficient competitors, and that public funding is directed towards research, training and energy efficiency.

## **4.2 Contribution of EU competition policy to tackling the challenges**

### *4.2.1. Antitrust investigations in basic industries and manufacturing*

Manufacturing and consumer goods industries continue to represent a focal point of the Commission's enforcement practice. In 2021, the Commission continued its lines of action (including individual casework, market surveillance and advocacy) in these sectors. In June 2021, the Commission conducted inspections in the sector of manufacturing and distribution of garments in Germany<sup>284</sup>. It also engaged with stakeholders on the potential application of the antitrust rules to co-operative crisis schemes. At the same time, it continued to monitor the aftermarkets in manufacturing industries, to ensure that competition is not reduced to the overall detriment of consumers.

### *4.2.2. Merger investigations in basic industries and manufacturing*

On 18 March 2021, the Commission approved the acquisition of Eaton Hydraulics by Danfoss, subject to commitments<sup>285</sup>. Both companies are leading global suppliers of hydraulic components used in machinery for the agricultural, industrial and construction industries. Following an in-depth investigation, the Commission was concerned that the transaction could have resulted in less choice and higher prices for certain hydraulic components, namely hydraulic steering units, electrohydraulic steering valves, and orbital motors. To address the Commission's concerns, Danfoss offered to divest three manufacturing plants located in Wroclaw (Poland), Parchim (Germany) and Hopkinsville (US), complemented by a transfer of further production lines and technology. These commitments fully address the Commission's competition concerns and ensure that downstream manufacturers of machinery can continue to benefit from competitive prices and have choice of innovative components for their products.

On 23 December 2019, EssilorLuxottica notified its planned acquisition of GrandVision to the Commission. EssilorLuxottica is the largest global eyewear company, active in sunglasses, lenses and frames. It owns or operates several well-known brands in the eyewear universe such as Ray-Ban, Oakley and Chanel. It is also present with optical retail chains in various European countries. GrandVision is a globally active eyewear retailer, which operates some of the largest optical chains throughout Europe, such as GrandOptical and Pearle. Following an in-depth investigation, the Commission was concerned that the unparalleled brand portfolio of EssilorLuxottica, combined with GrandVision's leading presence in the retail distribution of these products, could worsen rival opticians' access to EssilorLuxottica's products in Belgium, Italy and the Netherlands. To address the Commission's concerns, EssilorLuxottica offered to divest part of its retail operations in these Member States. The Commission cleared the acquisition of GrandVision by EssilorLuxottica – subject to the conditions outlined above – on 23 March 2021<sup>286</sup>. Through this intervention, the Commission ensured that competition at the optical retail level remains vibrant, to the benefit of customers in these countries.

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<sup>284</sup> See press release of 22.6.2021 at [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_3145](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3145).

<sup>285</sup> Case M.9820 - *Danfoss / Eaton Hydraulics*.

<sup>286</sup> Case M.9569 – *EssilorLuxottica / Grandvision*.

In the crop protection industry, the Commission authorised on 11 February 2021 the acquisition of Belchim by Mitsui, subject to a number of conditions<sup>287</sup>. These conditions were: (i) Mitsui's transfer of its distribution agreement and customer relationships for its potato plant growth regulators (used to prevent or control sprouting in stored potatoes) for Germany, Poland, Denmark, Sweden, Norway and Finland; and (ii) Belchim's transfer of its distribution agreement and relevant data and agreements for its paraffinic oils for virus control in seed potatoes and flower bulbs (used to control viruses) in the Netherlands. The Commission found that the transaction as originally notified would have significantly reduced competition and could have led to higher prices in the relevant countries for the supply of the abovementioned products. Through its intervention, the Commission ensured that customers of plant growth regulators and of paraffinic oils for virus control continue to have sufficient choice in the relevant countries.

In 2021 the Commission continued its investigation into and, on 13 January 2022, ultimately prohibited the acquisition of Daewoo Shipbuilding & Marine Engineering CO., Ltd (DSME) by Hyundai Heavy Industries Holdings (HHIH)<sup>288</sup>. Both companies are global leaders in the construction of large liquefied gas (LNG) carriers (LLNGCs), and two of the three largest players in this very concentrated market. The Commission found that the merger would have created a dominant position, reduced choice in suppliers and led to higher prices for EU customers in the global market for the construction of LLNGCs, which are very sophisticated, difficult to build and expensive vessels. The Commission based its findings on considerations such as the parties' very high and increasing market shares, the fact that there are already very few alternatives for customers and that for a shipbuilder to successfully enter or expand in this market is extremely difficult. The parties did not formally offer commitments to address the Commission's concerns. The Commission preserved effective competition in the LLNGC market to the benefit of EU customers (which account for almost 50% of all orders for such vessels in the past five years).

On 3 May 2021, the European Commission fined Sigma-Aldrich EUR 7.5 million for providing incorrect or misleading information during the Commission's investigation of Merck's acquisition of Sigma-Aldrich<sup>289</sup>. The Commission had approved that acquisition in 2015 subject to the divestiture of certain Sigma-Aldrich assets, which sought to address the competition concerns identified in markets for specific laboratory chemicals. However, the Commission subsequently found evidence that Sigma-Aldrich had failed to disclose the existence of an innovation project at the time of remedy discussions, despite it being material for the Commission's investigation. Based on Sigma-Aldrich's contemporaneous internal documents and other evidence, the Commission concluded that Sigma-Aldrich had acted intentionally or at least by negligence. The decision underscores that the provision of correct and complete information is a cornerstone of the EU's merger control regime and that merging parties must disclose all potentially relevant information to the Commission, or risk a fine.

#### *4.2.3. State aid investigations in basic industries and State aid for the rescue and restructuring of companies in difficulties*

Next to a constantly high number of decisions linked to the COVID-19 pandemic, the enforcement was centred on the assessment of several significant rescue and restructuring

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<sup>287</sup> Case M.9686 – Mitsui / Belchim Crop Protection.

<sup>288</sup> Case M.9343 - Hyundai Heavy Industries Holdings / Daewoo Shipbuilding & Marine Engineering.

<sup>289</sup> Case M.8181 – Merck / Sigma-Aldrich.

operations, with a particular focus on the airline sector (see below under 7.2.2. *State aid to the aviation sector*).

In addition, in December 2021, the Commission adopted a decision approving Croatia's restructuring aid to mechanical engineering company Đuro Đaković d.d. for a total amount of EUR 57.4 million<sup>290</sup>. The core business of the company is the manufacture of freight wagons for special purposes. After approving rescue aid to the company in May 2020, Croatia submitted a plan for Đuro Đaković to finance its restructuring and restore its long-term viability with the support of a private investor, a consortium of Czech companies DD Acquisition, who will become the controlling shareholder of Đuro Đaković. The Commission found that the aid is appropriate, that it supports a comprehensive restructuring plan running until the end of 2023, and proportionate, with an own contribution of over 50% of the restructuring costs provided by the company and the investor at market terms. Also, measures are provided to limit potential distortions of competition on the market for freight wagons where the company operates.

## **5. AGRI-FOOD INDUSTRY**

### **5.1 Overview of key challenges in the sector**

The resilience of food supply chains continued being tested in 2021 as a consequence of the COVID-19 pandemic. The rise in energy prices in Europe towards the end of 2021, particularly for natural gas, has already caused a significant increase of prices for fertilisers. The prices of raw materials and the costs of freight have also sharply increased. As a result, global food prices towards the end of 2021 were at their highest levels since 2011 according to the FAO Food Price Index<sup>291</sup>.

While the EU's food supply chain has overall shown its resilience during the ongoing pandemic, some specific sectors, products, and groups of workers have had to sustain higher levels of pressure from the crisis. Challenges in storage of production, for example in aquaculture reinforced this pressure, as did the reduction in demand for these sectors' products, in particular from the restaurant and catering sector.

These challenges add to already existing, longer-term challenges for the European agri-food industry, namely (i) increased competition from supply inside as well as outside Europe, (ii) higher and changing demands from end consumers in terms of qualitative aspects such as health, animal welfare, variety and improved traceability and (iii) higher investment needs to mitigate the impact of the agri-food value chain on the air, soil and water pollution, the GHG emissions.

Coupled with certain characteristics of the EU agricultural sector, such as low levels of concentration, small size and weaker bargaining power vis-à-vis food processors, wholesalers and retailers, it is more difficult for the sector to cope with these challenges. Moreover, the issue of generational renewal in farming continues to pose a structural risk to the viability of the EU agricultural sector in the long term, despite the positive impact of Common

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<sup>290</sup> Case SA.58248 – *Croatia - Restructuring aid to Đuro Đaković*.

<sup>291</sup> The FAO Food Price Index is a measure of the monthly change in international prices of a basket of food commodities, available at: <https://www.fao.org/worldfoodsituation/foodpricesindex/en/>.

Agricultural Policy funds<sup>292</sup>.

#### *5.1.1. The reform of the Common Agricultural Policy (“CAP”) for the period 2023-2027*

In December 2021 the co-legislators adopted the reform of the CAP for the period 2023-2027<sup>293</sup>. The new rules include clarifications of certain competition rules and two new derogations from the scope of the application of the competition rules. The first derogation extends to all products with a protected geographical indication (protected designation of origin - PDO or protected geographical indication - PGI) and introduces the possibility to jointly fix quantities produced for a given geographical indication<sup>294</sup>.

The second derogation allows agreements concluded by agricultural producers (alone or together with/ other actors from the supply chain) and aimed at achieving sustainability objectives such as climate change mitigation and adaptation, reduction of the use of pesticides, animal welfare, etc., whenever such agreements aim to apply a sustainability standard higher than mandated by EU or national law<sup>295</sup>.

A key condition set by the co-legislators is that such agreements should impose only restrictions of competition that are indispensable for the attainment of the standard(s) at stake. The Commission and national competition authorities may decide to modify or terminate an agreement where this is necessary to prevent competition from being excluded or the pursuit of the objectives set out in Article 39 TFEU being jeopardised. The Commission shall issue guidelines for operators concerning the conditions for the application of this derogation by December 2023.

#### *5.1.2. Challenges for the proper functioning of the Single Market*

A first challenge for the proper functioning of the Single Market is the existence of protectionist agreements in certain national markets. Operators in some national markets (for example retailers alone or together with other levels of the supply chain) sometimes agree on giving preference to domestic products even though this preference is not based on objective criteria (for example quality, specific traits, etc.) of the products. This preference is sometimes promoted through the labelling of origin of domestic products, notwithstanding the mandatory labeling requirements for certain products and foodstuffs<sup>296</sup>. Such discrimination based on nationality hurts the fundamental principle of the EU to give a fair chance to all producers inside the EU independently of their origin. The Commission, in coordination with NCA, has investigated a number of agreements in 2021 concluded between supermarket

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<sup>292</sup> See for example the Evaluation of the impact of the CAP on generational renewal, local development and jobs in rural areas, SWD(2021) 78 final.

<sup>293</sup> Regulation (EU) 2021/2117 of 2.12.2021, OJ L 435, 6.12.2021, p. 262–314.

<sup>294</sup> Article 166a of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 as amended by Article 1 paragraph 49 of (EU) 2021/2117 of 2.12.2021, OJ L 435, 6.12.2021.

<sup>295</sup> Article 210a of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 as amended by Article 1 paragraph 60 of Regulation (EU) 2021/2117 of 2.12.2021, OJ L 435, 6.12.2021.

<sup>296</sup> For certain products and foodstuffs the indication of the country of origin or place of provenance is mandatory to benefit consumers. In addition, geographical indications (GIs) help to identify products having characteristics or reputation due to natural or human factors linked to the place of origin. Thereby GIs as a form of intellectual property rights help to promote fair competition by preventing bad-faith use.



chains or between representatives of operators along the supply chain. As a result of these investigations, in most cases the terms of the agreements were modified or the agreements were terminated.

## **5.2. EU competition policy's contribution to the functioning of the Single Market**

### *5.2.1. The application of the EU State aid rules in the agricultural and fishery sector*

State aid to promote the economic development of the agricultural and forestry sectors is embedded in the broader Common Agricultural Policy (CAP) and in particular the rural development policy. Similarly, State aid to promote the economic development of the fishery and aquaculture sectors is closely linked to the Common Fishery Policy (CFP) and in particular to EU support granted under the European Fisheries, Maritime and Aquaculture Fund (EMFAF). The economic effects of State aid do not change depending on whether it is (even partially) financed by the EU, or whether it is financed by a Member State alone. Consequently, the use of State aid can only be justified if it is in line with the CAP and the CFP and meets the underlying objectives of those policies in terms of ensuring viable food production and promoting the efficient and sustainable use of resources in order to achieve intelligent and sustainable growth, including economic, social and employment benefits.

The Commission has set up specific frameworks of rules for State aid in agriculture, forestry, fishery and aquaculture. Most of those rules are long-standing and have proven their relevance over the years. However, State aid rules are limited in time and the current State aid rules will expire at the end of 2022. The ongoing review comprises the Agricultural Block Exemption Regulation (ABER)<sup>297</sup>, the State aid Guidelines for agriculture, forestry and rural areas<sup>298</sup>, the Fisheries Block Exemption Regulation (FIBER)<sup>299</sup>, the Regulation on de minimis aid in the fishery and aquaculture sector<sup>300</sup> and the State aid Guidelines for fishery and aquaculture<sup>301</sup>. The Regulation on de minimis aid in the agricultural sector<sup>302</sup> was already revised in 2019 and is not, therefore, part of the ongoing revision.

In 2021, the Commission continued to assess notifications on State aid by Member States and adopted a total of 198 decisions<sup>303</sup> in agriculture, forestry, fishery and aquaculture and continued to advise Member States' authorities on how to interpret and implement the

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<sup>297</sup> Commission Regulation (EU) No 702/2014 of 25.6.2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 193, 1.7.2014, p. 1.

<sup>298</sup> Commission Communication: European Union guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014-2020, OJ C 204, 1.7.2014, p. 1.

<sup>299</sup> Commission Regulation (EU) No 1388/2014 of 16.12.2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 369, 24.12.2014, p. 37.

<sup>300</sup> Commission Regulation (EU) No 717/2014 of 27.6.2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector, OJ L 190, 28.6.2014, p. 45.

<sup>301</sup> Commission Communication: Guidelines for the examination of State aid to the fishery and aquaculture sector, OJ C 217, 2.7.2015, p. 1.

<sup>302</sup> Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector, OJ L 352, 24.12.2013, p. 9.

<sup>303</sup> This includes decisions not to raise objections, decisions to initiate the formal investigation procedure as well as corrigenda or correcting decisions.



applicable State aid rules. The Commission also continued to check all new block exempted measures designed by Member States under the existing ABER prior to their entry into force (in total 418) and advised Member States in case of any doubts or problems, thereby enabling them to implement the corresponding aid schemes quickly.

### *5.2.2. Investigation into possible restrictions of parallel trade*

In 2021 the Commission continued its ex-officio investigations into possible restrictions of parallel trade of food products. In January 2021, it initiated proceedings against Mondelez regarding a number of potentially restrictive practices on the markets for chocolate, biscuits and coffee products<sup>304</sup>. It also carried out other investigations, for instance in the drinks sector. Such enforcement is aimed at ensuring lower prices for consumers on the relevant markets as well as a wider choice of products offered.

### *5.2.3. Buying alliances and competition in retail trade in the single market*

In 2021 the Commission has continued its antitrust investigation, opened in November 2019, against two large French retailers, Casino and Les Mousquetaires/Intermarché, regarding potential collusion built around their purchasing alliance, and consisting in a coordination on shop development and on prices towards final consumers<sup>305</sup>.

With such investigations, the Commission seeks to address an EU-wide systemic risk of collusion through buying alliances both at national and international level. The risk of exchanges of information reducing competition has been made more acute since retailers have often changed partners in these alliances, and specialised managers have been moving between retailers and alliances, thus providing multiplied opportunities for retailers to collude.

The Casino & Intermarché alliance case is subject to court proceedings. On 5 October 2020 the General Court had ruled on the legality of the 2017 inspection decisions of the Commission in three cases<sup>306</sup>. The companies concerned appealed the judgements to the CJEU.

## **6. PHARMACEUTICAL AND HEALTH SERVICES SECTORS**

### **6.1 Overview of key challenges**

Patients' access to effective, innovative and affordable medicines forms one of the pillars of the Commission's new Pharmaceutical Strategy for Europe<sup>307</sup>. Contributing to these objectives, the Commission and the competition authorities of the Member States have continued to vigorously enforce EU competition rules in the pharmaceutical and healthcare sectors in 2021. Such enforcement complements the regulatory frameworks in these sectors,

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<sup>304</sup> Case AT.40632 - *Mondelez trade restrictions*.

<sup>305</sup> Case AT.40466 - *Alliance Casino & Intermarché*.

<sup>306</sup> Judgments of the General Court of 5.10.2020, T-249/17, *Casino, Guichard-Perrachon and Achats Marchandises Casino SAS (AMC) v Commission*, EU:T:2020:458; T-254/17, *Intermarché Casino Achats v Commission*, EU:T:2020:459 and T-255/17, *Les Mousquetaires and ITM Entreprises v Commission*, EU:T:2020:460. The judgments are under appeal to the Court of Justice (C-690/20 P; C-693/20 P and C-682/20 P).

<sup>307</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Pharmaceutical Strategy for Europe COM (2020) 761 final 25.11.2020.

and fosters both dynamic competition, which leads to more innovative medicines, and effective price competition, which in turn contributes to more affordable and accessible medicines and treatments.

## 6.2 Contribution of EU competition policy

### 6.2.1. Antitrust enforcement in the pharmaceutical sector

In February 2021, the Commission adopted its first excessive pricing decision in the pharmaceutical sector in the Aspen case<sup>308</sup>. The decision makes binding Aspen's ten-year price commitment for a range of cancer medicines in Europe (except Italy), effectively reducing prices for these medicines on average by 73%. The Commission continues monitoring the implementation of the commitments by the company.

The Commission is also scrutinising potentially anticompetitive unilateral practices hindering the entry or expansion of cheaper products (for example, generics or biosimilars) following the loss of exclusivity of the original product. In March 2021, the Commission opened a new investigation into a potential abuse of a dominant position by Teva due to a suspected misuse of the patent system as well as a disparagement campaign to foreclose competitors<sup>309</sup>.

In addition, the Commission also carried out unannounced inspections in the animal health sector<sup>310</sup> and is investigating complaints and market information regarding, in particular, conduct that hinders the entry or uptake of competing products<sup>311</sup>.

#### Lundbeck judgment<sup>312</sup>

In *Lundbeck*, the CJEU fully confirmed the Commission's approach<sup>313</sup> to pay-for-delay agreements in the context of patent disputes. In these agreements, a pharmaceutical company offers transfers of value to producers of generic medicines to induce them to abandon or delay their independent efforts to enter the market.

In 2002, Lundbeck had concluded a number of agreements with different generic companies regarding generic versions of Lundbeck's branded citalopram, a blockbuster antidepressant. The generic companies agreed with Lundbeck not to enter the market in return for substantial cash payments and other inducements from Lundbeck amounting to tens of millions of euros. Lundbeck internally spoke about a "club" being formed and "a pile of \$\$\$" to be shared with the generics producers.

The CJEU upheld the Commission's assessment that such pay-for-delay agreements constituted restrictions by object, because the value transfers could not have had any other explanation than the interest of the parties not to engage in competition on the merits. The CJEU also confirmed that at the time of the agreements, Lundbeck and the generic companies were potential competitors, because they

<sup>308</sup> Case AT.40394 - *Aspen*.

<sup>309</sup> Case AT.40588 - *Teva Copaxone*. See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_1022](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1022)

<sup>310</sup> See [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_5543](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5543).

<sup>311</sup> In some cases, after investigative steps taken by the Commission, the companies concerned abandoned or changed the investigated practices, see, for instance, case AT.40731 *Quidel: diagnostic testing kits*, where a long-lasting non-compete obligation concerning cardiovascular disease testing kits was removed, and case AT.40576 – *Lonza*, where alleged exclusionary practices in the contract development and manufacturing of biological medicines were discontinued.

<sup>312</sup> Judgments of the Court of Justice of 25.3.2021, C-586/16 P, *Sun Pharmaceutical Industries and Ranbaxy (UK) v Commission*, EU:C:2021:241; C-588/16 P, *Generics (UK) v Commission*, EU:C:2021:242; C-591/16 P, *Lundbeck v Commission*, EU:C:2021:243; C-601/16 P, *Arrow Group and Arrow Generics v Commission*, EU:C:2021:244; C-611/16 P, *Xellia Pharmaceuticals and Alpharma v Commission*, EU:C:2021:245 and C-614/16 P, *Merck KGaA v Commission*, EU:C:2021:246.

<sup>313</sup> Commission Decision C(2013) 3803 final of 19.6.2013 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.39226 – *Lundbeck*).

had real and concrete possibilities of entering the market and competing with Lundbeck, and did not face any insurmountable entry barriers.

### 6.2.2. Merger review in the pharmaceutical sector

The Commission continued to ensure that concentrations in the pharmaceutical sector do not lead to consumers paying higher prices, having less choice or reduced innovation.

On 19 February 2021, the Commission approved the acquisition of Varian by Siemens, subject to interoperability commitments between: (i) its medical imaging solutions and rivals' radiotherapy solutions; and (ii) its radiotherapy solutions and rivals' imaging solutions.<sup>314</sup> The Commission found that the transaction as originally notified would have harmed competition by foreclosing competitors in the EEA and UK markets for the supply of medical imaging solutions and radiotherapy solutions. In particular, the Commission's investigation found that the combination of Siemens, the largest supplier of medical imaging solutions, with Varian, the largest supplier of radiotherapy solutions, could lead to foreclosure of the parties' rivals through the degradation of the interoperability.

On 5 July 2021, the Commission approved the acquisition of Alexion by AstraZeneca, both global pharmaceutical companies<sup>315</sup>. Alexion focuses on the treatment of rare diseases, whilst AstraZeneca focuses on common diseases. The transaction gave rise to: (i) horizontal overlaps between AstraZeneca's and Alexion's pipeline drugs for the treatment of lupus nephritis, follicular lymphoma and peripheral T-cell lymphoma; and (ii) a vertical link related to the manufacture of Uplizna, a drug for the treatment of various rare diseases. The Commission found that the proposed acquisition would raise no competition concerns because of its limited impact on the markets concerned.

On 19 April 2021, the Commission accepted a request from France, joined by Belgium, Greece, Iceland, the Netherlands and Norway, to assess the proposed acquisition of GRAIL by Illumina under the EU Merger Regulation. Illumina is a leading supplier of short-read next generation sequencing systems for genetic and genomic analysis. GRAIL is a customer of Illumina, and develops cancer detection tests relying on short-read next generation sequencing systems. The proposed transaction did not meet the turnover thresholds of the EU Merger Regulation, and was not notified in any Member State, but met the criteria for referral under Article 22 of the EU Merger Regulation.

On 22 July 2021, the Commission opened an in-depth investigation in the proposed acquisition of GRAIL by Illumina<sup>316</sup>. The Commission had serious doubts that the proposed acquisition could reduce competition and innovation in the emerging market for the development and commercialisation of cancer detection tests based on short-read next-generation sequencing technologies.

On 18 August 2021, Illumina publicly announced that it had completed its acquisition of GRAIL, while the Commission's review of the proposed transaction was still pending. The Commission opened an investigation to assess a possible imposition of a fine for a breach of

<sup>314</sup> Case M.9945 – *Siemens Healthineers / Varian Medical Systems*. Commission Decision of 19.2.2021. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_9945](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9945).

<sup>315</sup> Case M.10165 – *AstraZeneca / Alexion Pharmaceuticals*. Commission Decision of 5.7.2021. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_10165](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_10165).

<sup>316</sup> Case M.10188 – *Illumina / GRAIL*; Commission Decision of 22.7.2021. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_9945](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9945).

the standstill obligation. On 29 October 2021, the Commission adopted interim measures to restore and maintain the conditions of effective competition following Illumina's early acquisition of GRAIL<sup>317</sup>. This is the first time the Commission adopted interim measures following an unprecedented early implementation of a concentration.

### 6.2.3. State aid action in the health services sector

The Commission made progress on the evaluation of the State aid rules for health and social Services of General Economic Interest (SGEI) and the SGEI *de minimis* Regulation that was launched in 2019<sup>318</sup>. In September 2021, the Commission published an external study that it had commissioned to gain a better insight in the market developments in the hospital and social housing sector in 10 Member States<sup>319</sup>. This study should contribute in helping the Commission to get a better and more detailed understanding of the potential issues that Member States may have had in implementing the SGEI rules.

On 2 June 2021, the General Court in case T-223/18 upheld the Commission decision of 4 December 2017 concluding that the remuneration of public hospitals in Lazio, Italy providing healthcare services within the Italian health care system did not constitute State aid under Article 107(1) TFEU as those hospitals are not economic in nature<sup>320</sup>. The General Court's judgement has been appealed to the CJEU (C-492/21 P).

## 7. TRANSPORT, TOURISM, AND POSTAL SERVICES

### 7.1 Overview of key challenges

The transport and postal services sectors continue to play a key role in the EU economy. Transport is the key to both an integrated internal market and to an open economy integrated into the world economy. Postal services continue to have a significant economic and social value, not the least because they are also active on other markets, in particular parcel delivery. Efficient postal services are a key factor in allowing e-commerce to realise its full potential for growth and creating jobs.

Throughout 2021, the transport sector continued to be severely affected by the COVID-19 pandemic. In the aviation sector, several EU airlines remained under constant operational pressure due to the resurgence of infection rates and the discovery of new variants. This caused passenger movements to be restricted, with the ensuing low revenue consequences requiring immediate public support.

### 7.2 Contribution of EU competition policy

#### 7.2.1. Merger review in the aviation sector

In 2021, the Commission continued with its in-depth investigation into the acquisition of Transat (the parent company of Air Transat) by Air Canada notified in April 2020. The investigation focused on the parties' overlapping operations in the passenger air transport services between the EEA and Canada. The Commission's investigation also focused on the extent to which the Covid-19 pandemic would impact Air Canada's, Transat's and their

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<sup>317</sup> Case M.10493 – *Illumina / GRAIL*, (Art. 8(5) EU Merger Regulation procedure).

<sup>318</sup> See: [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-3777435\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-3777435_en).

<sup>319</sup> See: [https://ec.europa.eu/competition-policy/system/files/2021-09/kd0621047enn\\_SGEI\\_evaluation.pdf](https://ec.europa.eu/competition-policy/system/files/2021-09/kd0621047enn_SGEI_evaluation.pdf).

<sup>320</sup> Judgment of the General Court of 2.6.2021, T-223/18, *Casa Regina Apostolorum della Pia Società delle Figlie di San Paolo v Commission*, EU:T:2021:315.

competitors' operations in the mid- and long-term. Based on the results of the market test, the remedies offered by the parties appeared insufficient. The parties subsequently decided to terminate the proposed merger agreement on 2 April 2021<sup>321</sup>.

On 25 May 2021, the Commission received a notification of a proposed acquisition of Air Europa (a subsidiary of a Spanish family-owned tourism group Globalia Corporación Empresarial) by International Consolidated Airlines Group ("IAG") which, among others, controls Iberia, British Airways, and several other airlines<sup>322</sup>. On 29 June 2021, the Commission opened an in-depth investigation on grounds the merger would have negatively affected competition on numerous domestic, short-haul and long-haul routes, within, to and from Spain. The investigation took in full account the impact of COVID-19 restrictions on the markets affected. IAG offered remedies but the market test revealed the remedies would not fully address the competition concerns. On 16 December 2021, the parties subsequently decided to terminate the proposed merger agreement.

### *7.2.2. State aid to the aviation sector*

As the aviation sector continued to be severely affected by the COVID-19 pandemic throughout 2021 and to assist Member States in their efforts to support the aviation sector in this context, the Commission further amended its Temporary Framework for State aid measures<sup>323</sup>. This included increasing the aid ceilings, as well as introducing new measures to create direct incentives for forward-looking private investment and solvency support measures. The Commission also continued to support Member States in their efforts to provide compensation linked to the damage suffered as a direct consequence of the COVID-19 pandemic under Article 107(2)(b) TFEU.

In 2021, the Commission adopted 35 decisions allowing State aid in favour of undertakings active in the aviation sector, to help address their liquidity and capital needs brought about by the COVID-19 pandemic. These aid measures were generally approved under the Temporary Framework for State aid measures or Article 107(2)(b) TFEU. A few notable examples are presented below:

On 4 January 2021, the Commission announced its decision to approve the plans of Germany to contribute EUR 1.25 billion to the recapitalisation of TUI AG as part of a wider support plan<sup>324</sup>. The Commission noted that TUI had suffered substantial losses because of the COVID-19 pandemic, in particular because of the travel restrictions that Germany and other countries imposed to limit the spread of the virus. The Commission approved the support as it was in line with the conditions set out in the Temporary Framework for State aid measures, considering that TUI AG was facing a risk of default and insolvency notwithstanding support measures previously granted to it.

On 12 March 2021, the Commission approved a EUR 351.38 million contribution from Finland in the form of a hybrid loan to Finnair<sup>325</sup>. The Commission noted that Finnair had suffered substantial operating losses because of the COVID-19 pandemic, in particular because of the travel restrictions that Finland and other countries imposed to limit the spread

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<sup>321</sup> Case M.9489 - *Air Canada / Transat*.

<sup>322</sup> Case M.9637 - *IAG / Air Europa*.

<sup>323</sup> [https://ec.europa.eu/competition-policy/state-aid/coronavirus/temporary-framework/amendments\\_en](https://ec.europa.eu/competition-policy/state-aid/coronavirus/temporary-framework/amendments_en).

<sup>324</sup> Case SA.59812 - *Germany – COVID-19 - Recapitalisation of TUI*.

<sup>325</sup> Case SA.60113 – *Finland – COVID-19 - Aid to Finnair*.

of the COVID-19 pandemic. Similarly, on 17 March 2021, the Commission approved EUR 350 million in support to Finavia<sup>326</sup>, the manager of 21 airports in Finland.

On 5 April 2021, the Commission announced its decision to approve a EUR 4 billion recapitalization of Air France<sup>327</sup>. The Commission noted that in 2019, the Air France-KLM group reported an annual operating profit of approximately EUR 750 million but that as a direct result of the travel restrictions that France and other countries imposed to limit the spread of the COVID-19 pandemic, Air France and its holding company suffered a significant reduction in activities leading to major operating losses. France's recapitalization of Air France was proposed in two steps, comprised of (a) the conversion of the EUR 3 billion loan already granted to Air France into a hybrid capital instrument; and (b) a capital injection of up to EUR 1 billion from the purchase of new shares. The Commission considered that the measures were consistent with Article 107(3)(b) TFEU and the conditions set out in the Temporary Framework for State aid measures.

On 5 July 2021, the Commission opened an in-depth investigation into the restructuring of the Romanian flag carrier TAROM<sup>328</sup>, after having approved around EUR 36.7 million of rescue aid in February 2020<sup>329</sup>. The restructuring plan notified by Romania in May 2021 sets out a package of measures for streamlining TAROM's operations, renewing its ageing fleet and reducing costs. The Commission will in particular examine whether the proposed restructuring plan is appropriate for addressing TAROM's difficulties and for restoring its long-term viability in a reasonable time frame without continued State aid, whether TAROM or market operators would sufficiently contribute to the restructuring costs, and whether appropriate measures to limit the distortions of competition created by the aid would accompany the restructuring.

On 9 July 2021, the Commission approved a Swedish and Danish aid measure of approximately EUR 300 million to support Scandinavian Airlines System (SAS)<sup>330</sup>. The aim of the measure was to provide SAS with the liquidity support it needed following the deterioration of its cash-flow situation due to the new travel restrictions and containment measures imposed by Denmark and Sweden in order to limit the impact of new waves of the virus as of September 2020. The aid took form of loans (EUR 150 million granted by Sweden and EUR 150 million granted by Denmark) with subsidised interest rates and a maturity of maximum five years. The Commission found the aid compatible under Article 107(3)(b) TFEU.

On 16 July 2021, the Commission approved the grant of a EUR 1.2 billion rescue loan in favour of the Portuguese flag carrier TAP<sup>331</sup>, after a previous decision<sup>332</sup> had been annulled by the General Court<sup>333</sup>. This decision finds that the rescue loan fulfils all conditions of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in

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<sup>326</sup> Case SA.59132 – Finland – COVID-19 - Aid to Finavia.

<sup>327</sup> Case SA.59913 - *France – COVID-19 - Recapitalisation of Air France and the Air France – KLM Holding*.

<sup>328</sup> Case SA.59344 – *Romania - Restructuring aid to Tarom*.

<sup>329</sup> Case SA.56244 – *Romania - Rescue aid to Tarom*.

<sup>330</sup> Case SA.63838 – *Sweden and Denmark – COVID-19- State loan to SAS Consortium*.

<sup>331</sup> Case SA.57369 – *Portugal - Rescue aid to TAP SGPS*.

<sup>332</sup> Commission decision C(2020) 3989 final of 10.6.2020 in State aid case SA.57369 (2020/N) COVID-19 – Portugal – Aid to TAP.

<sup>333</sup> Judgment of the General Court of 19.5.2021, T-465/20, *Ryanair DAC v European Commission*, EU:T:2021:284.



difficulty<sup>334</sup>. Moreover, and following an in-depth investigation, the Commission on 21 December 2021 approved EUR 2.55 billion of restructuring aid in the form of equity or quasi equity measures, including the conversion of the EUR 1.2 billion rescue loan into equity in a conditional decision, to enable TAP SGPS and the airline TAP Air Portugal to return to viability<sup>335</sup>. The Commission found that the revised restructuring plan and the commitments obtained, including in particular Portugal abandoning a plan to grant EUR 512 million in loan guarantees, improved the proportionality of aid. Furthermore, the decision envisages competition measures to preserve effective competition at the Lisbon airport. TAP will make available up to 18 slots per day at Lisbon airport to a competing carrier. These measures will enable the lasting entry or expansion of a competing carrier at this airport, to the benefit of consumers. A transparent and non-discriminatory selection procedure will be organised by the Commission (with the support of a Monitoring Trustee) to select the competing carrier.

On 27 July 2021, the Commission found an aid package by Germany in favour of Condor in line with EU State aid rules<sup>336</sup>. The approval of the aid package, based on three separate Commission decisions, related to two measures to compensate Condor for damages suffered as a result of the COVID-19 pandemic, worth in total EUR 204.1 million, and EUR 321.2 million of restructuring support to enable Condor's return to viability.

Also on 27 July 2021, the Commission also approved a EUR 110 million aid to compensate Athens International Airport S.A.<sup>337</sup>, the operator of Athens international airport Eleftherios Venizelos, for the damage suffered due to the COVID-19 pandemic and the travel restrictions that Greece and other countries imposed to limit the spread of the virus. The aid took the form of a direct grant and of a cancellation of concession fees. The measure was approved under Article 107(2)(b) TFEU.

In September 2021, the Commission adopted two decisions regarding the Italian airline Alitalia. After opening an in-depth investigation on two state loans totalling EUR 900 million in 2018, the Commission has concluded that these loans would not have been granted by a market economy investor and thus constitute State aid within the meaning of the EU rules<sup>338</sup>. Moreover, the loans were not in line with EU rules on State aid to companies in difficulty such as Alitalia. This is because the loans were not reimbursed within six months, Italy never submitted a restructuring plan capable of restoring the company's viability, nor was the company liquidated. The Commission therefore concluded that the loans gave Alitalia an unfair economic advantage vis-à-vis its competitors on national, European and world routes, which it needs to pay back<sup>339</sup>. In a separate decision<sup>340</sup>, the Commission also found that the new Italian airline ITA, that is set to take over part of Alitalia's assets, is not the economic successor of Alitalia and thus not liable to repay illegal aid received by Alitalia. It also found

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<sup>334</sup> Communication from the Commission — Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249, 31.7.2014, p. 1.

<sup>335</sup> Case SA.60165 – Portugal - Restructuring aid to TAP SGPS.

<sup>336</sup> Cases SA.56867 – Germany Compensation for the damage caused by the COVID-19 outbreak to Condor Flugdienst GmbH; SA.63203 - Germany - Restructuring aid for Condor and SA.63617 - Germany COVID 19 – Condor damage compensation II.

<sup>337</sup> Case SA.62052 – Greece – COVID-19 - Aid to Athens International Airport.

<sup>338</sup> Case SA.48171 – Italy - Complaints against alleged State aid to Alitalia.

<sup>339</sup> Commission Press Release, 10.9.2021, “Commission concludes Italian loans worth €900 million to Alitalia are illegal” aid, available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_4664](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_4664).

<sup>340</sup> Case SA.58173 – Italy – Newco ITA ; Commission Press Release, 10.9.2021, “Commission finds new air carrier ITA is not Alitalia's economic successor and Italy's capital injections into ITA are market conform”, available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_4665](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_4665).

that Italy's capital injections of EUR 1.35 billion into the new company are in line with market conditions, and therefore do not amount to State aid under EU rules.

In December 2021, the Commission adopted two other decisions concerning TAP. The Commission approved compensation for damages TAP Air Portugal suffered due to the COVID-19 pandemic as a direct result of the travel restrictions. The first decision concerned EUR 107.1 million to compensate for damage it suffered between 1 July 2020 and 30 December 2020<sup>341</sup>, and the second decision concerned EUR 71.4 million to compensate for damage it suffered between 1 January and 30 June 2021<sup>342</sup>. The Commission considers that the COVID-19 pandemic qualifies as an exceptional occurrence, as it is an extraordinary, unforeseeable event having a significant economic impact. As a result, exceptional interventions by the Member States to compensate for the damages directly linked to the pandemic are justified. The measures for TAP Air Portugal compensate damage that is directly linked to the COVID-19 pandemic and they are proportionate as the compensation does not exceed what is necessary to make good the damage.

### *7.2.3. European Union Court judgements in aviation aid cases*

In 2021, the General Court delivered a number of important judgements concerning State aid cases in the aviation sector.

On 17 February 2021, the General Court handed down its judgement<sup>343</sup> rejecting Ryanair's challenges to the Commission decision approving aid to Swedish airlines<sup>344</sup>. The General Court rejected all of Ryanair's pleas. In relation to the allegation that the aid was discriminatory (reserved to Swedish airlines), the General Court noted that the loan guarantee scheme satisfied the conditions laid down in Article 107(3)(b) TFEU. The General Court also held that limiting eligibility for the aid to only those airlines which hold a Swedish licence because of the stable reciprocal links which tie them to the Swedish economy, was appropriate for achieving the objective of remedying the serious disturbance in the Swedish economy.

On the same day, the General Court handed down its judgement<sup>345</sup> rejecting Ryanair's challenges to the Commission's decision to approve France's aid to French airlines (moratorium on the collection of civil aviation tax and the solidarity tax ordinarily imposed by the French State<sup>346</sup>). The General Court confirmed that the COVID-19 pandemic constituted an exceptional occurrence within the meaning of Article 107(2)(b) TFEU, causing economic damage to the airlines operating in France. The General Court considered that the objective of the deferral of the payment of the taxes clearly had the objective to make good the damage in question.

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<sup>341</sup> Case SA.63402 – *Portugal - COVID 19 - Compensation to TAP SA II*.

<sup>342</sup> Case SA.100121 – *Portugal - COVID-19 Damages compensation to TAP III*.

<sup>343</sup> Judgment of the General Court of 17.2.2021, T-238/20, *Ryanair v. Commission*, EU:T:2021:91.

<sup>344</sup> Case SA.56812 – *Sweden – COVID-19 - Loan guarantee scheme to airlines*.

<sup>345</sup> Judgment of the General Court of 17.2.2021, T-259/20, *Ryanair v. Commission*, EU:T:2021:92.

<sup>346</sup> Case SA.56765 – *France – Covid-19 – Deferral of the payment of airline taxes in favour of public air transport undertakings*.

On 14 April 2021, the General Court dismissed the actions for annulment brought by Ryanair against three decisions of the Commission authorising State aid in the airline sector<sup>347</sup>. The cases concerned individual aid measures granted by Finland to Finnair<sup>348</sup>, and by Denmark and Sweden to Scandinavian Airlines (“SAS”)<sup>349</sup>. The General Court found that Member States can grant individual aid to companies affected by the economic consequences of the COVID-19 pandemic on the grounds of Article 107(2)(b) and (3)(b) TFEU. In particular, with regard to Article 107(2)(b) TFEU (SAS cases), the Court found that Member States are not required to make good the entirety of the damage caused by COVID-19, and that they do not have to compensate all “victims” of that damage. With regard to Article 107(3)(b) TFEU (Finnair I case), the Court found that an aid measure authorised on the basis of Article 107(3)(b) TFEU does not have to be “*capable, in itself, of remedying the serious disturbance in the economy of the Member State concerned. Once the Commission has established the reality of a serious disturbance in the economy of the Member State concerned, that State may be authorised, if the other conditions laid down in that Article are also satisfied, to grant State aid, in the form of aid schemes or individual aid, which help to remedy that serious disturbance*”<sup>350</sup>.

On 19 May 2021, the General Court handed down its judgement<sup>351</sup> annulling the Commission’s decision to approve the Netherlands financial aid for the airline KLM amid the COVID-19 pandemic on the grounds of inadequate reasoning<sup>352</sup>. However, due to the particularly damaging impact of the pandemic on the Netherlands economy, the General Court suspended the effects of the annulment pending the adoption of a new Commission decision. The related notified aid, with a total budget of EUR 3.4 billion, consisted, first, of a State guarantee for a loan to be granted by a consortium of banks and, secondly, a State loan. By that measure, the Netherlands intended to provide temporary liquidity needed by KLM to deal with the adverse effects of the COVID-19 pandemic. In its judgement, the General Court provided clarifications on the scope of the Commission’s duty to state reasons when it declares aid granted to the subsidiary of a holding company to be compatible with the internal market, where another subsidiary of the same holding company has already benefited from similar aid.

On 14 July 2021, the General Court confirmed the Commission decision of 6 July 2020<sup>353</sup> approving under Article 107(2)(b) TFEU State aid in favour of Austrian Airlines, which is part of the Lufthansa group, in the form of a subordinated loan convertible into a grant of EUR 150 million as compensation for damage suffered by Austrian Airlines due to the pandemic<sup>354</sup>.

The General Court confirmed the Commission’s position that:

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<sup>347</sup> Cases SA.56809 – Finland – COVID-19 - State loan guarantee for Finnair; SA.56795 – Denmark – Compensation for the damage caused by the COVID-19 outbreak to Scandinavian Airlines; SA.57061 – Sweden – Compensation for the damage caused by the COVID-19 outbreak to Scandinavian Airlines.

<sup>348</sup> Judgment of the General Court of 14.4.2021, T-388/20, *Ryanair v Commission (Finnair I)*, EU:T:2021:196.

<sup>349</sup> Judgments of the General Court of 14.4.2021, T-378/20, *Ryanair v Commission (SAS, Denmark)*, EU:T:2021:194 and T-379/20, *Ryanair v Commission (SAS, Sweden)*, EU:T:2021:195.

<sup>350</sup> T-388/20 *Ryanair v Commission (Finnair I)*, EU:T:2021:196, paragraph 41.

<sup>351</sup> Judgment of the General Court of 19.5.2021, T-643/20, *Ryanair v Commission*, EU:T:2021:286.

<sup>352</sup> Case SA.57116 – The Netherlands – COVID-19 - State loan guarantee and State loan for KLM.

<sup>353</sup> Case SA.57539 – Austria – COVID-19 – Aid to Austrian Airlines.

<sup>354</sup> Judgment of the General Court of 14.7.2021, T-677/20, *Ryanair and Laudamotion v Commission*, EU:T:2021:465.

- Under Article 107(2)(b) TFEU, the Commission may consider appropriate to allow compensation for net losses not only for the period of full grounding of the beneficiary's fleet but also for the days immediately preceding that period when there were already cancellations and rescheduling of flights due to restrictions.
- Austrian Airlines was not overcompensated due to the aid already granted to the other companies of the Lufthansa group under Article 107(3)(b) TFEU. The General Court confirmed that aid authorised under Article 107(3)(b) TFEU may in principle be combined with aid authorised on the basis of Article 107(2)(b) TFEU, provided that the requirements of each of those provisions are fulfilled.

#### *7.2.4. Monitoring activities in the container shipping sector*

In 2021, carriers active in liner shipping services, their customers (shippers and freight forwarders), port operators and logistics services providers continued to be confronted with exceptional challenges, leading to sharp price increases for container shipping services and to deteriorated service availability and reliability. The reasons have been multi-faceted (for example strong demand for goods, port congestion, landside bottlenecks, etc.), not necessarily entirely similar across the world, and hardly attributable to only one determining factor or one category of operators.

Over the course of the year, the Commission has been in regular contact with relevant stakeholders, regulators and competition authorities worldwide to identify any scope for intervention that can facilitate the return to normal operations. In March 2021, the Commission organised a Maritime Forum, where industry representatives of the entire maritime supply chain discussed the difficulties in the sector and possible ways forward. At the Global Maritime Summit organised by the Commission in September 2021, regulators from China and the US concurred with the Commission that anti-competitive behaviour from shipping alliances aimed at increasing freight rates had not been identified at this stage.

#### *7.2.5. State aid enforcement in the maritime transport sector*

The competitiveness of the maritime transport sector is important for a well-functioning Single Market as it leads to beneficial spill-over effects for other sectors in a European maritime economy that is integrated in the global markets.

In 2021, the Commission approved a number of State aid schemes under the Maritime Guidelines<sup>355</sup>. On 1 July 2021, the Commission adopted a positive decision concerning a EUR 30 million French seafarer scheme aimed at reimbursing ship-owners with the social security costs of their seafarers<sup>356</sup>. On 5 July and 10 December 2021, the Commission approved the prolongation with amendments of two German seafarer schemes<sup>357</sup>. In the latter cases, the German authorities extended the scheme to all eligible vessels registered in any EU/EEA shipping register. Moreover, on 25 October 2021 the Commission approved a 10-year

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<sup>355</sup> Commission Communication C(2004)43 - Community guidelines on State aid to maritime transport, OJ C 13, 17.1.2004, p. 3.

<sup>356</sup> Case SA.59537 – *France - Remboursement des cotisations sociales des marins*.

<sup>357</sup> Cases SA.62571 – *Germany - Prolongation of the reduction of the wage tax payable on seafarers' wages*; SA.64873 – *Germany - Prolongation with amendments of the scheme on the reduction of non-wage labour costs in maritime shipping*.

prolongation of a Danish seafarer scheme providing for tax deductions<sup>358</sup>. The schemes approved by the Commission under the Maritime Guidelines encourage ship registration within the EU and contribute to the global competitiveness of the sector without unduly distorting competition.

In addition, the Commission adopted a number of decisions, in the context of the COVID-19 pandemic, both under Article 107(2)(b) TFEU as well as the Temporary Framework for State aid measures, to compensate damages suffered by shipping companies and support companies operating in the maritime sector. Those decisions concerned amongst others damage compensation and direct grants for passenger shipping companies in Sweden<sup>359</sup>, compensation for Brittany Ferries in France<sup>360</sup> and direct grants to shipping companies in Italy<sup>361</sup>.

#### *7.2.6. Rail and intermodal transport State aid enforcement*

As in other transport modes hit by the new waves of the COVID-19 pandemic, public intervention in the rail sector was necessary to preserve connectivity and the Commission quickly responded to that challenge once again.

First, the Commission in 2021 approved under Article 107(2)(b) TFEU three measures<sup>362</sup> under which railway undertakings are compensated for the damages suffered as a result of the COVID-19 pandemic. In addition, the Commission approved seven measures, either under the Temporary Framework for State aid measures<sup>363</sup> or under the 2008 Guidelines on State aid for railway undertakings<sup>364</sup>, most of which concern reductions of track access charges and infrastructure access fees<sup>365</sup>.

Beside the handling of COVID-19 related cases, the Commission continued to enforce State aid rules applicable to the rail and intermodal transport sector. The Commission approved 12 schemes<sup>366</sup> for the coordination of transport (encompassing aid for infrastructure use, aid for

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<sup>358</sup> Case SA.62065 – Denmark - Prolongation of the Danish tax deduction scheme for seafarers.

<sup>359</sup> Cases SA.59863 – Sweden - Amendment to SA.57710 - Compensation for damages suffered by passenger ferries due to COVID19; SA.62726 – Sweden - COVID-19 - Prolongation shipping aid (SA.59863).

<sup>360</sup> Case SA.62193 – France - State aid to compensate Brittany Ferries for the damage suffered as a result of the coronavirus pandemic.

<sup>361</sup> Case SA.62525 – Italy – COVID-19 - aid to shipping companies.

<sup>362</sup> Cases SA.59346 - Italy - Damage compensation to commercial rail passenger operators; SA.62375 - Czechia – Damage compensation scheme for rail passenger transport operators; SA.63846 – Germany – Damage compensation for Deutsche Bahn AG.

<sup>363</sup> Case SA.62881 - Denmark - COVID-19 aid scheme supporting providers of public passenger transport by rail.

<sup>364</sup> Communication from the Commission — Community guidelines on State aid for railway undertakings OJ C 184, 22.7.2008, p. 13–31.

<sup>365</sup> Cases SA.60655 - Austria – Amendments to the existing aid scheme for the provision of rail freight services in certain forms of production and temporary support for rail freight and passenger transport; SA.59376 - Italy - Reduction of track access charges for rail freight and commercial rail passenger services; SA.62391 – Denmark - Waiver of infrastructure access charges for public passenger transport services by rail; SA.62762 – Italy – Prolongation of the COVID-19 scheme for the reduction of track access charges for rail freight and commercial rail passenger services; SA.62763 - Germany - COVID-19 - Amendment of an existing aid scheme for rail freight transport; SA.63635 - Germany - COVID-19 - Amendment of an existing aid scheme for rail freight transport and temporary support for long-distance rail passenger transport providers.

<sup>366</sup> Cases SA.58817 – Italy - State aid to support freight transport by inland waterways in Italy; SA.58908 – Germany - Support for ERTMS and automatic train operation in the Stuttgart area; SA.59183 – Italy - Modification of “Marebonus” scheme to promote highways of the sea; SA.59448 – Hungary - Single Wagon Load Scheme; SA.60132 – Austria - Prolongation of the programme for support of investments in combined



the reduction of external costs or aid for interoperability) on the basis of the 2008 State aid Guidelines and Article 93 TFEU. Approved schemes include for instance aid to combined transport, aid to support measures for noise reduction, aid to support the deployment of the European Rail Traffic Management System (ERTMS)<sup>367</sup> and aid for single wagon transport. All these measures support the modal shift from road to rail, inland waterways or sea transport as the safer and more environmentally-friendly transport modes, which constitutes a priority to implement the European Green Deal.

#### *7.2.7. State aid enforcement in the road sector*

In August 2021, the Commission adopted, under the Temporary Framework for State aid measures, two decisions concerning aid for an amount of approximately EUR 40 million in relation to support for bus<sup>368</sup> and coach tourism operators<sup>369</sup> in Ireland. In addition, on 27 May and 5 November 2021 the Commission approved aid to undertakings engaged in road passenger transport by bus in Italy for an overall amount of EUR 25 million<sup>370</sup>.

#### *7.2.8. State aid enforcement in the postal services sector*

Through State Aid control in the postal services sector, the Commission ensures that competition between incumbent service providers and new entrants is not being distorted, that recipients of State aid are not shielded from competitive pressure and market developments and that efficiency, innovation and efficiency remains incentivised.

On 23 July 2021, the Commission opened an in-depth investigation to assess whether the compensation granted by Denmark to Post Danmark in 2020 to fulfil its public service mission is in line with State aid rules<sup>371</sup>. The concerns that led to the opening of the formal investigation relate to the methodologies of allocation of costs between the universal postal services and non-universal postal services and the potential impact on the net cost calculation.

On 27 July 2021, the Commission concluded that the one-year prolongation until 31 December 2021 of the provision of several services of general economic interest (SGEI) for bpost in Belgium was compatible with the internal market under Article 106(2) TFEU as it met all the conditions of the SGEI Framework<sup>372</sup>. The SGEIs concerned include the

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*freight transport; SA.60177 – Belgium - Aid scheme improving the quality of intermodal connections to and from Flemish seaports; SA.60383 – Sweden - Prolongation and amendments to the scheme on environmental compensation for rail freight transport; SA.60451 - Belgium - Aid for intermodal transport of containers by waterways in the Brussels-Capital Region for the period 2021 – 2025; SA.60499 - Belgique - Aide au post-équipement des wagons pour réduire les nuisances sonores du transport ferroviaire de marchandises; SA.62018 – Czechia - Support for rail freight operators using electric traction; SA.62208 – Slovenia - Grants to promote rail freight transport in Slovenia; SA.62800 – Sweden - Prolongation of the Swedish scheme on environmental compensation for rail freight transport (SA.60383).*

<sup>367</sup> The European Rail Traffic Management System (ERTMS) is a single European signalling and speed control system that ensures interoperability of the national railway systems, reducing the purchasing and maintenance costs of the signalling systems as well as increasing the speed of trains, the capacity of infrastructure and the level of safety in rail transport.

<sup>368</sup> Case SA.63009 – Ireland - COVID-19: Aid to licensed commercial bus operators.

<sup>369</sup> Case SA.64443 – Ireland - COVID-19: Irish Coach Tourism Scheme (amendment to SA.58955).

<sup>370</sup> Cases SA.62718 - Italy - Support to road passenger transport; SA.64342 - Italy - COVID-19: Aid to undertakings engaged in road passenger transport by bus.

<sup>371</sup> Cases SA.57991 - Denmark - USO compensation for Post Danmark 2020; SA.55918 - Denmark - Alleged State aid for Post Danmark for USO in 2020.

<sup>372</sup> Case SA.62486 - Belgium - Prolongation of the 6th Management Contract between the Belgian State and bpost.



maintenance of a retail network, home payment of pensions and allowances, distribution of election materials and the social role of the postman.

On 2 September 2021, the Commission concluded that a two-year prolongation until 31 December 2022 worth EUR 350 million of the concession contract between Belgium and bpost for the distribution of newspapers and periodicals was compatible with the internal market under Article 106(2) TFEU as it met all the conditions of the SGEI Framework<sup>373</sup>.

On 10 September 2021, the Commission concluded, following an in-depth investigation that started on 14 June 2019, that a capital injection from PostNord Group AB to Post Danmark did not constitute State aid<sup>374</sup>. In the same decision, the Commission concluded that two capital injections from Denmark and Sweden respectively to PostNord AB constituted State aid as they conferred an advantage to PostNord AB. The two capital injections of in total SEK 667 million will be recovered.

## **8. TAXATION AND STATE AID**

### **8.1 Overview of key challenges on tax evasion and avoidance and fiscal aid**

The Commission enforces State aid rules in fiscal matters, notably in view of aggressive tax planning practices that distort or threaten to distort competition, as well as fiscal policy decisions that lead to discriminatory treatment of companies.

Aggressive tax planning strategies can take a variety of forms, including through the shifting of profits to low or no-tax jurisdictions where there is little or no economic activity, resulting in little or no overall corporate tax being paid. Aggressive tax planning can be realised by using preferential tax schemes, or through individual means, for example by requesting individual tax rulings. Aggressive tax planning has many adverse effects in the EU market as undue tax reliefs distort competition in the Single Market and aggressive tax planning also compromises social fairness, since the revenues foregone from not taxing the profits of multinational companies must be compensated elsewhere, usually by shifting the overall tax burden to less mobile tax bases, such as labour income and income of small-scale enterprises. Aggressive tax planning can also affect the Single market by distorting investment decisions, which are driven by tax optimisation strategies rather than other considerations.

### **8.2 The contribution of EU competition policy to tackling the challenges**

In 2021, the Commission continued to enforce State aid rules in tax matters. Although, in the absence of harmonisation, direct taxation is a competence of the Member States, national tax measures have to comply with internal market rules and be in line with EU competition rules. The case law of the CJEU has consistently held, and recently reaffirmed<sup>375</sup>, that Article 107 TFEU allows the Commission to determine whether a tax measure confers on undertakings an economic advantage which places the beneficiaries in a more favourable position than other taxpayers.

#### **8.2.1. State aid investigations concerning aggressive tax planning**

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<sup>373</sup> Case SA.56448 - *Belgium - Prolongation of bpost's concessions over 2021 and 2022*.

<sup>374</sup> Cases SA.49668 – *Denmark - Capital injections for PostNord and Post Danmark*; SA.53403 – *Sweden - Capital injections for PostNord and Post Danmark*.

<sup>375</sup> Judgment of the Court of Justice (Grand Chamber) of 6.10.2021, C-52/19 P, *Banco Santander SA v European Commission*, EU:C:2021:794.

In 2021, the Commission continued its investigation into Member States' tax rulings practice and changes in tax legislation. In 2014, the Commission had started collecting information on Member States' tax rulings practices for the years 2010-2013. This aimed at clarifying allegations whether tax rulings constitute State aid and to allow the Commission to take an informed view of the practices of all Member States. Overall the Commission looked into more than a thousand rulings.

However, Member States have moved on since 2013 both in terms of tax legislation and of ruling practices. In order to assess this evolution, the Commission at the end of 2019 requested all Member States to provide an update of their legislative and administrative practices and a list of tax rulings for the years 2014 to 2018. This review continued in 2021.

#### 8.2.2. Ongoing aggressive tax planning cases

The Commission continued the investigation of its pending cases on alleged State aid granted by the Netherlands to Inter IKEA, to Starbucks and to Nike; and on alleged State aid granted by Luxembourg to Huhtamäki.

In 2021, the Commission defended a number of its decisions before the Union Courts. The General Court delivered its judgement in the Amazon<sup>376</sup> and Engie<sup>377</sup> cases, while the CJEU delivered its judgement in the Belgium Excess Profit<sup>378</sup> case.

#### **Luxembourg – General Court judgement on Amazon**

On 12 May 2021, the General Court annulled the Commission decision of 4 October 2017 in case SA.38944 on State aid granted by Luxembourg to Amazon on the basis that the Commission had not shown the existence of an advantage in favour of Amazon to the requisite legal standard. However, it upheld the Commission decision on the applicability of important legal principles.

In its decision, the Commission had concluded that Luxembourg had granted illegal and incompatible aid to Amazon EU S.à.r.l. (LuxOpCo) in the form of an undue reduction of its tax liability from 2006 to 2014.

In the case at hand, LuxOpCo paid a royalty for an intra-group IP license to another group company, LuxSCS, which was exempt from tax in Luxembourg. According to the Commission, Luxembourg wrongly attributed the bulk of the profit to the tax transparent, empty shell company LuxSCS, rather than LuxOpCo. The Commission's decision was based on a primary and three subsidiary lines of reasoning.

The Court ruled that the Commission did not succeed, by any of the findings, in demonstrating to the requisite legal standard the existence of an advantage within the meaning of Article 107(1) TFEU. As regards the primary finding of advantage, the Court stated that the Commission relied on the wrong piece of guidance provided by the OECD for the assessment of intra-group transactions. In so doing, the Commission failed to appreciate the relevance of legal ownership of an IP (which rested with LuxSCS) for the purpose of its analysis. As to the subsidiary findings of advantage, the Court considered that the Commission failed to demonstrate that the methodological Transfer Pricing errors it identified led to the existence of an advantage.

The Commission decided to appeal the judgement to the CJEU<sup>379</sup>. The General Court judgement raises

<sup>376</sup> Judgment of the General Court of 12.5.2021, joined cases T-816/17 and T-318/18, *Luxembourg v Commission (Amazon)*, EU:T:2021:252.

<sup>377</sup> Judgment of the General Court of 12.5.2021, T-516/18 and T-525/18, *Luxembourg v Commission (Engie)*, EU:T:2021:251.

<sup>378</sup> Judgment of the Court of Justice of 16.9.2021, C-337-19 P, *Commission v. Belgium and Magnetrol International (Belgium Excess Profit)*, EU:C:2021:741.

<sup>379</sup> C-457/21 P, *Commission v Amazon.com and Others*.

important legal issues that are of relevance to the Commission in its application of State aid rules to tax planning cases. The Commission is bringing this matter before the CJEU to bring clarity on these legal issues.

At the same time, whilst the Commission decision on Amazon was annulled, this does not bring into question previous findings by the CJEU that tax sovereignty must be exercised in light of Treaty principles and EU State aid laws. The Court's judgement also confirms its previous judgements on the Belgian Excess Profit scheme, Fiat, Starbucks and Apple and the Commission's approach to assess whether transactions between group companies give rise to an advantage under EU State aid rules based on the so-called 'arm's length principle'.

#### **Luxembourg – General Court judgement on Engie**

On 12 May 2021, the General Court confirmed the Commission decision of 20 June 2018 in case SA.44888 on State aid granted by Luxembourg to Engie.

The Commission decision concluded that a series of tax rulings granted by Luxembourg to Engie, covering two identical, triangular financing structures, conferred a selective advantage to Engie by allowing certain profits to be generated and further distributed to the parent companies without being subject to taxation in Luxembourg. In particular, the profits of the subsidiaries were recorded as paid interest and deducted from their tax base, whilst being ultimately exempted from taxation upon their distribution to the holding companies, by virtue of the participation exemption. According to the Commission, Luxembourg granted a selective advantage to Engie on the basis of three lines of reasoning: (i) by applying the participation exemption to profits that had not been taxed at the level of the subsidiaries, (ii) by allowing the reduction of the combined tax base of the Engie group in Luxembourg and (iii) by not applying the abuse of law provision to these structures.

The Court endorsed one of the two selectivity assessments under the first line of reasoning as well as the third line of reasoning, while it refrained from examining the second one for reasons of procedural economy. As regards one of the selectivity assessments under the first reasoning, the Court accepted that the participation exemption should not have been applied to profits that had escaped taxation at the level of the subsidiaries, as this effectively led to double non-taxation and this result could not be in line with the internal coherence of the national tax system.

As regards the third reasoning, the Court accepted that, insofar as the criteria of the Luxembourg anti-abuse provision were fulfilled, the non-application of that rule by Luxembourg resulted in a selective advantage. Luxembourg and Engie have appealed the judgement to the Court of Justice.

#### **Belgium – CJEU judgement on the Belgian Excess Profit Scheme**

On 16 September 2021, the CJEU set aside the judgement of the General Court, which had annulled the Commission decision of 11 January 2016 on the Excess Profit exemption State aid scheme. By that scheme, Belgium exempted 39 multinational companies from taxation on their "excess" profits.

The matter set before the CJEU concerned the General Court's findings that the Commission had failed to demonstrate the existence of a scheme

The CJEU annulled the judgement of the General Court. The CJEU recalled that schemes may be based on legal acts, as well as on the consistent administrative practice of Member States where such practice amounts to a "systematic approach", and in particular in the case of a systematic misapplication of a provision. The CJEU considered that the General Court was inconsistent in finding that a scheme could be based on an administrative practice, while only looking at the underlying legal acts to identify the characteristics of that scheme.

The CJEU referred the cases back to the General Court to rule on the remaining pleas in law.

#### *8.2.3. Recent judgements by the CJEU on selectivity in tax matters*

In 2021 the CJEU provided new important insights for the assessment of selectivity of fiscal measures (three-step test), with new guidance in relation to the first step, that is to say the

determination of the reference framework, which is of particular importance in the case of tax measures, since the existence of an economic advantage for the purposes of Article 107(1) TFEU may be established only when compared with ‘normal’ taxation.

#### **Hungary & Poland - CJEU judgements on the Hungarian and Polish retail taxes**

On 16 March 2021, in Cases C-562/19 P *Commission v Poland* and C-596/19 P *Commission v Hungary*, the CJEU upheld the judgements of the General Court from May and June 2019, which had annulled the Commission decisions of 2016 and 2017 in cases SA.44351 (Polish tax on retail sector with progressive rates) and SA.39235 (Hungarian advertisement tax with progressive tax rates) on the grounds that, in the assessment of selectivity, the Commission incorrectly identified the reference tax system. In those decisions, the Commission had considered the appropriate reference system to be the imposition of a single (flat) rate tax on the turnover generated from advertisement (in the Hungarian case) or retail sales (in the Polish case), without the progressive tax structure being a part of that system. On that basis, the Commission declared that Hungary and Poland had granted illegal and incompatible State aid to smaller retailers subject to the lowest (including zero) rates.

The CJEU found that, outside the spheres in which EU tax law has been harmonised, the determination of the characteristics constituting each tax falls within the discretion of the Member States, in accordance with their fiscal autonomy. This includes, in particular, the choice of tax rate, which may be proportional or progressive, and also the determination of the basis of assessment and the taxable event. Those characteristics constituting the tax therefore, in principle, define the reference system or the ‘normal’ tax regime, from which it is necessary to analyse selectivity. In addition, the CJEU noted that EU law does not preclude progressive taxation from being based on turnover as it constitutes, in general, a relevant indicator of the taxable person’s ability to pay. Accordingly, the characteristics constituting the tax, which include progressive tax rates, form, in principle, the reference system or the ‘normal’ tax regime.

Further, the CJEU considered that the Gibraltar case-law (*Commission and Spain v Government of Gibraltar and United Kingdom* (C-106/09 P and C-107/09 P)) does not contradict the above finding, because the Commission had not established that the progressivity of the rates was designed in a manifestly discriminatory manner, with the aim of circumventing the requirements of EU law on State aid.

#### **Spain – CJEU judgement on the Spanish amortisation of financial goodwill**

On 6 October 2021, the CJEU dismissed the appeals brought against the judgements of the General Court upholding the Commission decisions of 28 October 2009 and 12 January 2011 (Goodwill I and Goodwill II respectively). In those decisions, the Commission had declared that Spain had implemented an unlawful and incompatible tax scheme consisting in the amortisation of financial goodwill for acquisitions of shareholdings in foreign undertakings by resident companies. Under a tax measure introduced in 2001 into the Spanish corporate tax, the financial goodwill resulting from the acquisition by a resident undertaking of a shareholding of at least 5% in a foreign company could be deducted, in the form of an amortisation. However, amortisation was not allowed for similar acquisitions in domestic companies. The Goodwill I and II decisions dealt with, respectively, acquisitions within the EU and acquisitions in third countries.

In particular, the CJEU identified the following criteria:

- The determination of the reference system must follow from an objective examination of the content, the structure and the specific effects of the applicable rules under the national law.
- Where the tax measure in question is inseparable from the general tax system of the Member State concerned, reference must be made to that system. On the other hand, where it appears that the measure at issue is clearly severable from that general system, it cannot be ruled out that the reference framework to be taken into account may be more limited than that general system, or even that it may equate to that measure itself, where the latter appears as a rule having its own legal logic.
- It is not necessary, during that first stage of the examination of selectivity, to take account of the objectives pursued by the legislature when adopting the measure under examination.

- The regulatory technique used cannot be decisive for the purposes of determining the reference framework.

This judgement must be seen in combination with the 2016 judgement of the CJEU on the same tax measure (see judgement in Joined Cases C-20/15 P, *World Duty Free Group* and C-21/15 P, *Banco Santander*) where it concluded that a measure that is in principle open to any undertaking can still be selective, if it discriminates between two sets of undertakings that are in a comparable factual and legal situation (in this case, companies that carry out acquisitions in foreign countries and those that carry out acquisitions in Spain). The CJEU had also found that it was not necessary for the Commission to identify a category of undertakings that was exclusively favoured by the tax measure to assess its selective nature.

## ANNEX 1.

### State aid decisions adopted under the Temporary Framework for State aid measures in 2021<sup>380</sup> by country

	Member State	Case number	Title	Decision date
1	Austria	SA.60599	COVID-19: Third amendment of SA.56981 (2020/N): Austrian guarantee scheme on bridge loans under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak	12-01-2021
2	Austria	SA.60290	COVID-19: Modification of SA.57148 (2020/N): Support Measures by the States (Länder) of Carinthia, Upper Austria, Styria, Tyrol and Vienna under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak	12-01-2021
3	Austria	SA.60117	COVID-19; Support Scheme for Events I	19-01-2021
4	Austria	SA.61210	COVID-19: Fourth amendment to the existing aid scheme SA.56981 under the Temporary Framework	29-01-2021
5	Austria	SA.61614	- COVID-19: Austrian Liquidity Assistance Scheme (SA.56840)  - COVID-19: Fixed Cost Compensation according to Chapter 3.12 of the Temporary Framework (SA.58661)	09-02-2021
6	Austria	SA.62010	SA.60321(2020/N); COVID-19: Compensation scheme: Directive for fixed cost subsidies for economic activities of Non Profit Organisations (SA.57928 (2020/N))	24-02-2021
7	Austria	SA.62419	SA.62419(2021/N)-Austria- COVID-19 Amendment of the Support Scheme for Events I	26-03-2021
8	Austria	SA.62288	COVID-19 - Amendment to the State (Land) of Carinthia's KWF Scheme	30-03-2021
9	Austria	SA.62569	COVID 19 – Kurzarbeitsbonus	02-06-2021
10	Austria	SA.63291	Guidelines of the Lower Austrian Economic and Tourism Fund - Funding program COVID-19	17-06-2021
11	Austria	SA.63692	Prolongation of COVID-19 schemes of Land Tyrol	13-07-2021

<sup>380</sup> A number of these decisions have subsequently been amended.



12	Austria	SA.63708	Covid-19: Fifth Amendment of the existing aid scheme SA.56981	15-07-2021
13	Austria	SA.64490	COVID-19: Direct grants for publicly owned spas and indoor pools with sauna and/or wellness area in Salzburg region	03-09-2021
14	Belgium	SA.60198	COVID-19: Investment aid for the production of COVID-19 related products (Université de Liège)	12-01-2021
15	Belgium	SA.60414	COVID-19: Investment aid scheme for the production of COVID-19 related products (Walloon Region)	12-01-2021
16	Belgium	SA.60524	COVID-19: Flemish Protection Mechanism for undertakings that suffer a turnover decline due to the continuing Covid-19 measures of 28 October 2020	29-01-2021
17	Belgium	SA.61748	Decision of the Flemish Government regarding a Covid-19 Globalisation Mechanism for undertakings that suffer a turnover decline due to the Covid-19 measures.	22-02-2021
18	Belgium	SA.61807	COVID-19: Aid for tourism undertakings in the context of the coronavirus	22-02-2021
19	Belgium	SA.62017	COVID-19: Support from the Flemish Government through the project call 'Flanders is a festival 2021' for organising festivals in the summer of 2021 in the context of the coronavirus	11-03-2021
20	Belgium	SA.62156	Modification to SA.60524 Flemish Protection Mechanism Covid-19	21-03-2021
21	Belgium	SA.62042	COVID-19: Amendments of approved measures	26-03-2021
22	Belgium	SA.62393	COVID-19: Aid for pig farmers with breeding sows	29-03-2021
23	Belgium	SA.62032	BE – COVID-19 – Subsidised loan scheme - Société Régionale d'Investissement de Wallonie	30-03-2021
24	Belgium	SA.62407	COVID-19 - Scheme for support to hotels and similar accommodation in Wallonia	08-04-2021
25	Belgium	SA.62336	COVID 19- support for tourism attractions in Wallonia	09-04-2021
26	Belgium	SA.60682	COVID 19 - Prolongation du régime d'aide de la SOWAER en faveur des sociétés de gestion des aéroports wallons. L'aide porte sur un report des redevance pour l'année 2021	12-04-2021
27	Belgium	SA.62430	COVID-19 Decision of the Flemish Government regarding the granting of a restart loan for undertakings with liquidity problems	23-04-2021

28	Belgium	SA.62466	COVID-19 Aid to professional sport clubs - BE	29-04-2021
29	Belgium	SA.62826	Second Amendment to SA.60524 (2020/N) - COVID-19: Flemish Protection Mechanism for undertakings that suffer a turnover decline due to the continuing Covid-19 measures of 28 October 2020	04-05-2021
30	Belgium	SA.62882	COVID-19: Aid to passengers transport sector in Wallonia	12-05-2021
31	Belgium	SA.62884	Compensation for undertakings active in BtoB and indirectly affected by closure décisions in the Walloon region	12-05-2021
32	Belgium	SA.62883	COVID-19: Régime wallon d'indemnité spécifique en faveur de certains secteurs touchés indirectement par des décisions de fermeture dans le cadre de la crise du coronavirus COVID-19	17-05-2021
33	Belgium	SA.62562	COVID 19 - BE - Reduction of social security contributions for the travel sector	04-06-2021
34	Belgium	SA.62650	COVID-19 - BE - Réduction groupe-cible secteur événementiel	04-06-2021
35	Belgium	SA.62651	COVID-19 - BE - Réduction groupe-cible secteur hôtelier	04-06-2021
36	Belgium	SA.63215	COVID-19: Support to tourist accommodation sector in Brussels	18-06-2021
37	Belgium	SA.63286	COVID-19: Extension Belgian Loan guarantee scheme in response to the COVID-19 crisis aimed at SMEs (amendments to SA.57869 and SA.60114)	18-06-2021
38	Belgium	SA.63252	COVID-19: Working from home in a healthy and vital way: call for projects	30-06-2021
39	Belgium	SA.63242	COVID-19: Flemish subordinated loan scheme for start-ups, scale-ups, and SMEs	05-07-2021
40	Belgium	SA.63243	COVID-19: Second Flemish subordinated loan scheme for start-ups, scale-ups and SMEs	05-07-2021
41	Belgium	SA.63932	COVID-19: Compensation for the costs of rebooking events in the Flemish Region.	16-07-2021
42	Belgium	SA.64030	Mécanisme de résilience pour les secteurs les plus durablement touchés depuis le début de la crise du coronavirus COVID-19	22-07-2021
43	Belgium	SA.63950	COVID-19: Prolongation of “target group” reductions for employers active in the travel and hotel sectors (SA.62562 and SA.62651)	28-07-2021

44	Belgium	SA.64031	Mise en place d'un mécanisme B2B « cascade Reca ». Indemnité spécifique à destination des indépendants et entreprises actifs en BtoB dans le secteur RECA.	30-07-2021
45	Belgium	SA.64488	COVID-19: Flemish Protection Mechanism for undertakings that suffer a turnover decline due to the continuing Covid-19 measures of 28 October 2020 (amendments to SA.60524, SA.62156, SA.62826)	01-09-2021
46	Belgium	SA.64072	RRF — Strategic investment and innovation support to social economy companies in the context of the COVID-19 outbreak	21-09-2021
47	Belgium	SA.64739	Amendment to SA.64488 (2021/N)-COVID-19: Flemish Protection Mechanism for undertakings that suffer a turnover decline due to the continuing Covid-19 measures of 28 October 2020 (amendments to SA.60524, SA.62156, SA.62826)	24-09-2021
48	Belgium	SA.64071	COVID-19: RRF- Future oriented training support to social economy companies in the context of the COVID-19 outbreak	06-10-2021
49	Belgium	SA.64775	Projet Arrêté du Gouvernement de la Région de Bruxelles-Capitale relatif à une aide de relance aux entreprises encore fortement impactées des secteurs des discothèques, des restaurants et cafés et de certains de leurs fournisseurs, de l'événementiel, de la culture, du tourisme, et du sport et du transport des voyageurs.	14-10-2021
50	Belgium	SA.63490	COVID-19 – BE – Deferral and exemption from the annual holiday contribution for employers in the HoReCa sector	18-10-2021
51	Belgium	SA.100118	COVID-19 Tourism accommodation in Brussels II	19-10-2021
52	Belgium	SA.100480	COVID-19: Aid to Travel organisers	15-11-2021
53	Belgium	SA.100716	COVID-19: financial support for the organisation of events in the context of the COVID-19 health crisis in the Brussels-Capital Region	06-12-2021
54	Belgium	SA.63455	COVID-19 - Measure covering fixed costs of Walloon airports	15-12-2021
55	Belgium	SA.63245	COVID-19 - Capital increase in Charleroi Airport BSCA	22-12-2021
56	Bulgaria	SA.60454	COVID-19: Grants for SMEs affected by temporary anti-epidemic measures under Operational Programme Innovation and Competitiveness 2014-2020	19-01-2021

57	Bulgaria	SA.61101	Amendment of SA.57795 (2020/N) and 57938 (2020/N) Bulgaria, BG16RFOP002-2.077 „Supporting medium enterprises to overcome the economic impact of the COVID-19 pandemic“.	20-01-2021
58	Bulgaria	SA.61348	COVID -19 – Second modification of SA. 57759 (2020/N) - Short-term employment support in response to the COVID-19 pandemic, as already modified by SA. 60082 (2020/N)	30-03-2021
59	Bulgaria	SA.62520	COVID-19: Second amendment of scheme SA.60454 (2020/N) Grants for SMEs affected by temporary anti-epidemic measures under Operational Programme Innovation and Competitiveness 2014-2020	23-04-2021
60	Bulgaria	SA.62887	COVID-19: Aid scheme for tour operators	25-05-2021
61	Bulgaria	SA.63638	COVID 19: Liquidity aid to farmers producing oilseed rose	08-07-2021
62	Bulgaria	SA.63497	Second Block notification of the Bulgarian approved measures under the Temporary Framework - Amendment of measures SA.57052, SA.59704, SA.57283, SA.57795, SA.60454, SA.56905, SA.58050, SA.58095, SA.56933	09-07-2021
63	Bulgaria	SA.64528	COVID-19: Amendment to the scheme supporting small enterprises with a turnover of over BGN 500 000 to overcome the economic consequences of the COVID-19 pandemic	01-09-2021
64	Bulgaria	SA.64711	COVID-19: Second amendment to SA.56933 (2020/N) – Intermediated SME loan guarantee program	01-10-2021
65	Bulgaria	SA.100255	COVID-19: LIQUIDITY SUPPORT TO FARMERS	27-10-2021
66	Bulgaria	SA.100427	COVID-19: Aid to the tourism sector	08-11-2021
67	Bulgaria	SA.100320	COVID-19 - BG - Compensation for employees and self-insured persons with activities subject to temporary restrictions	09-11-2021
68	Bulgaria	SA.100331	Support to micro, small, medium and large enterprises engaged in the carriage of passengers by coach or bus for overcoming the economic effect of the COVID-19 pandemic	16-11-2021
69	Croatia	SA.60265	COVID-19: Aid to the tourism and sport sectors	11-01-2021
70	Croatia	SA.62105	STATE AID PROGRAM FOR FATTENING PIGS PRODUCERS DUE TO BUSINESS DIFFICULTIES CAUSED BY THE COVID-19 PANDEMIC	05-03-2021

71	Croatia	SA.62383	State aid in fisheries supporting economy - COVID 19	25-03-2021
72	Croatia	SA.62616	COVID19 Amendments schemes SA.56877, SA.56957, SA.57175, SA.57595, SA.60265	12-05-2021
73	Croatia	SA.64375	COVID-19: State aid Scheme to support the maritime, transport, transport infrastructure, tourism, and related sectors impacted by the COVID-19 outbreak (amendments SA.57711)	06-09-2021
74	Croatia	SA.64716	STATE AID SCHEME FOR POULTRY SECTOR DUE TO BUSINESS DIFFICULTIES CAUSED BY THE COVID-19 PANDEMIC	05-10-2021
75	Croatia	SA.100417	STATE AID PROGRAMME TO PRIMARY PRODUCERS IN THE LIVESTOCK SECTOR DUE TO BUSINESS DIFFICULTIES CAUSED BY THE COVID-19 PANDEMIC	17-11-2021
76	Croatia	SA.100941	COVID-19: Prolongation of the scheme SA.64716 (2021/N)	17-12-2021
77	Croatia	SA.100942	Amendment SA.100417 - Aid to primary producers in the livestock sector due to business difficulties caused by the COVID-19 pandemic	20-12-2021
78	Croatia	SA.100913	COVID19 - HR - Prolongation to SA.57711	20-12-2021
79	Croatia	SA.100912	COVID-19: Prolongation of the schemes SA.56877, SA.56957, SA.57175 and SA.57595, as already amended	21-12-2021
80	Croatia	SA.100975	COVID-19: Prolongation of the schemes SA.56877, SA.56957, SA.57175 and SA.57595, as already amended	21-12-2021
81	Cyprus	SA.59668	COVID 19- Aid in the form of guarantees on credit notes issued for consumers and package travel organisers	12-01-2021
82	Cyprus	SA.60661	COVID-19 – Cyprus – Prolongation of SA.57691 and SA.57654	26-01-2021
83	Cyprus	SA.60274	COVID-19: Subsidy schemes for enterprises and self-employed affected by COVID-19	29-01-2021
84	Cyprus	SA.61839	COVID-19 - Support to enterprises and self-employed persons under mandatory suspension	08-03-2021
85	Cyprus	SA.62216	COVID 19: Amendment to Interest rate subsidy scheme for new business loans	18-03-2021
86	Cyprus	SA.61515	COVID-19 – Working Capital Loans in the Context	24-03-2021

			of the Cyprus Energy Fund of Funds	
87	Cyprus	SA.62228	COVID-19: Aid scheme in support of the agricultural sector to address the impact of the COVID-19 outbreak on the basis of the EU State aid Temporary Framework, succeeding SA.57587 (2020/N)	29-03-2021
88	Cyprus	SA.62199	Incentive scheme for Tour Operators to mitigate the effects of COVID-19 on tourism.	13-04-2021
89	Cyprus	SA.62693	State Aid SA. 62228 (2021/N) – Cyprus  COVID-19: Aid measure in support of the agricultural sector to address the impact of the COVID-19 outbreak on the basis of the EU State aid Temporary Framework, succeeding SA. 57587 (2020/N)	23-04-2021
90	Cyprus	SA.62397	COVID-19: Cyprus special schemes for wage subsidies to undertakings in certain economic activities	06-05-2021
91	Cyprus	SA.62908	COVID-19: Aid in the form of guarantees on credit notes issued for consumers and package travel organisers	11-05-2021
92	Cyprus	SA.63695	COVID-19 - Amendments to SA.57691,SA.59668, SA.61839, SA.62228 and SA.62397	09-07-2021
93	Cyprus	SA.64326	COVID-19: Government Guarantee Scheme towards credit institutions for the granting of loans to businesses and self-employed individuals	17-08-2021
94	Cyprus	SA.64602	Support scheme for the wine sector due to the impact of restrictive measures implemented because of the Covid 19 pandemic	22-09-2021
95	Cyprus	SA.63515	COVID-19: Aid in favour of SMEs which lease land belonging to Turkish Cypriots, State land and forestry land	24-09-2021
96	Cyprus	SA.101028	COVID-19: Prolongation of the schemes SA.59668 (2020/N), SA.61515 (2021/N), SA.62228 (2021/N) and SA.64326 (2021/N)	22-12-2021
97	Czechia	SA.59899	COVID 19 - Targeted Employment Program Antivirus Plus	12-01-2021
98	Czechia	SA.59334	COVID 19 – Amendment to wage subsidy scheme (SA.57102)	12-01-2021



99	Czechia	SA.61234	CZ - COVID-Gastronomy - Closed establishments	27-01-2021
100	Czechia	SA.61358	COVID-19 - CZ - Compensation bonus to self-employed persons and to partners in small limited liability companies	12-02-2021
101	Czechia	SA.61361	COVID 19 – support to entrepreneurs ( rent – call 3)	23-02-2021
102	Czechia	SA.62044	Aid to mitigate the impact of SARS COV-19 outbreak on agrifood production (AGRICOVID II)	01-03-2021
103	Czechia	SA.61808	COVID-19: Support for operators of ski resorts	05-03-2021
104	Czechia	SA.62040	COVID19: Modifications to SA.58213, SA.59536, SA.58167, SA.57149, SA.57358, SA.57195, SA.58198, SA.61234, SA.59118 and SA.57094	05-03-2021
105	Czechia	SA.60280	COVID-19: support to tour operators	19-03-2021
106	Czechia	SA.59401	COVID fix costs scheme for Exhibitions, fairs, conferences and business events - CZ	29-03-2021
107	Czechia	SA.61470	COVID-19: Aid in the form of guarantees on investment loans	29-03-2021
108	Czechia	SA.61824	COVID-19: Third amendment to SA.57094 (2020/N)	29-03-2021
109	Czechia	SA.61948	COVID19 – support to accommodation facilities II	06-04-2021
110	Czechia	SA.62477	COVID-19: Programme of uncovered fixed costs	26-04-2021
111	Czechia	SA.61837	COVID Guarantees for travel agencies	10-05-2021
112	Czechia	SA.62471	Umbrella Scheme for Programmes to Support Entrepreneurs Affected by the Worldwide Spread of COVID-19 under section 3.1 of Temporary Framework	10-05-2021
113	Czechia	SA.62362	COVID-19 Support programme for the audiovisual sector – CZ	27-05-2021
114	Czechia	SA.60062	COVID-19: Aid for the extraordinary direct costs faced by Czech terrestrial television network operators	13-07-2021
115	Czechia	SA.62970	COVID-19 Deferral of payment of public health insurance premiums for the self-employed	02-08-2021
116	Czechia	SA.62442	COVID 19 – Amendment to Targeted Employment Program Antivirus Plus (SA.59899)	28-09-2021
117	Czechia	SA.62441	COVID 19 – Amendment to wage subsidy scheme (SA.57102 & SA.59334)	28-09-2021
118	Czechia	SA.100663	COVID-19 - CZ - Targeted Employment Program „Antivirus“	02-12-2021

119	Czechia	SA.100917	COVID-19: Prolongation of the schemes SA.57358, as already amended, SA.58018, as already amended, SA.58167, as already amended, SA.62471, SA.62477 and SA.62970	21-12-2021
120	Denmark	SA.60074	COVID-19 compensation scheme for TV producers-DK	18-01-2021
121	Denmark	SA.61233	COVID-19 - Credit facility and deferral of withholding taxes for SME employers	25-01-2021
122	Denmark	SA.61809	COVID-19 -Denmark -4th amendment to SA.57164	17-02-2021
123	Denmark	SA.61946	COVID-19: Compensation scheme for self-employed affected by Covid-19 related measures.	27-02-2021
124	Denmark	SA.61947	COVID19 Modifications to SA.59960, SA.58515, SA.59414, SA.56708, SA.56808	03-03-2021
125	Denmark	SA.61943	Credit Facility and Deferral of VAT liabilities due by SMEs	05-03-2021
126	Denmark	SA.62035	COVID-19 - Aid scheme for discounts on tickets for cultural events	23-03-2021
127	Denmark	SA.62599	COVID-19: Modification to SA.59370 scheme to support airlines holding a Danish air operator certificate	30-04-2021
128	Denmark	SA.63019	COVID 19 – Third amendment to the Danish wage compensation scheme for undertakings prohibited from operating (SA.58515).	20-05-2021
129	Denmark	SA.63029	COVID-19:Aid for local weekly newspapers in Denmark- DK	21-05-2021
130	Denmark	SA.62998	COVID-19 - Aid scheme relating to VAT Rate for Medium-sized Enterprises with due date 1 June 2021 as well as an Amendment regarding Case SA.61233	25-05-2021
131	Denmark	SA.62998	COVID-19 - Aid scheme relating to VAT Rate for Medium-sized Enterprises with due date 1 June 2021 as well as an Amendment regarding Case SA.61233	25-05-2021
132	Denmark	SA.62881	COVID-19 aid scheme supporting providers of public passenger transport by rail	21-06-2021
133	Denmark	SA.63250	SA.63250 COVID-19 – Subsidised loan to SAS	09-07-2021
134	Denmark	SA.63201	Second amendment to the umbrella schemes under TF 3.1 and 3.12	15-07-2021
135	Denmark	SA.63654	COVID-19: Amendment to aid scheme to support airlines holding a Danish air operator certificate (SA.59370 as amended by SA.62599)	16-07-2021

136	Denmark	SA.64159	COVID-19: Danish aid scheme for event suppliers (under TF 3.1)	30-07-2021
137	Denmark	SA.63958	State aid to Bavarian Nordic A/S.	23-08-2021
138	Denmark	SA.64616	COVID-19: Amendments to SA.60074(2021/N)- Compensation scheme for TV producers	09-09-2021
139	Denmark	SA.64617	COVID-19 amendment to guarantee schemes SA.56708 and SA.56808	15-09-2021
140	Denmark	SA.64773	Prolongation of SA.57678	28-09-2021
141	Denmark	SA.100192	COVID-19 - DK - Amendment to SA.57027 (Credit facility and tax deferrals linked to VAT and payroll tax), SA.59341 (Amendment to SA.57027 - Credit facility and tax deferrals linked to VAT and payroll tax) and SA.61943 (Credit facility and Deferral of VAT liabilities due by SMEs)	14-10-2021
142	Denmark	SA.100368	COVID-19: Support to travel operators for an additional fee to cover bankruptcies	03-12-2021
143	Denmark	SA.100775	COVID-19: Third amendment to the compensation scheme for fixed cost SA.60081 (umbrella scheme under TF.3.1) as amended by SA.61241 and SA.63201	17-12-2021
144	Denmark	SA.100776	COVID-19: Third amendment to the compensation scheme for fixed costs SA.60094 (umbrella scheme under TF.3.12) as amended by SA. 61242 and SA.63201	17-12-2021
145	Estonia	SA.61615	COVID-19: Remuneration allowance and partial compensation in connection with COVID-19 disease prevention restrictions to undertakings in Ida-Viru and Harju County.	17-02-2021
146	Estonia	SA.61586	Covid 19 – support to culture organisers in Ida-Viru and Harju County	18-02-2021
147	Estonia	SA.60666	Exceptional temporary support due to the COVID-19 outbreak for farmers	15-03-2021
148	Estonia	SA.61591	COVID-19: Aid to undertakings in tourism and directly related sectors 2	25-03-2021
149	Estonia	SA.62513	COVID-19: Experimental development support for COVID-19 relevant products and services (TF section 3.6)	14-04-2021
150	Estonia	SA.62690	COVID-19: Amendments to schemes SA.56804, SA.57028 and SA.59278	23-04-2021

151	Estonia	SA.62815	COVID 19 - Emergency Assistance to culture organisers due to the outbreak of COVID-19	07-05-2021
152	Estonia	SA.62825	COVID-19: Aid to undertakings in tourism and retail sectors (TF section 3.1)	12-05-2021
153	Estonia	SA.62801	COVID-19: Aid to production and distribution of films (including cinemas) – EE	26-05-2021
154	Estonia	SA.62921	COVID-19: Aid to providers of commercial regular bus services	03-06-2021
155	Estonia	SA.63197	COVID-19: amendments to SA.57014 (2020/N) and SA.58783 (2020/N)	04-06-2021
156	Estonia	SA.63164	COVID-19: Emergency aid for the restructuring of a cultural operator's service, product, business process or business model due to a COVID-19 outbreak and emergency aid to cultural and sports public entities, foundations set up by the State and public authorities managed by government agencies due to COVID-19 related restrictions	11-06-2021
157	Estonia	SA.63122	COVID-19: Emergency assistance for operators of experience centres and operators of other buildings used for conferences or similar events that have suffered due to the restrictions on the spread of COVID-19 virus	11-06-2021
158	Estonia	SA.63701	COVID 19: support to event and conference organizers in the cultural sector	15-07-2021
159	Estonia	SA.63935	Exceptional support to fish processors due to Covid-19 outbreak	29-07-2021
160	Estonia	SA.64220	COVID-19 - Support to tourism, retail sector and conference venues (amendments to SA.61591, SA.62825 and SA.63122)	13-08-2021
161	Estonia	SA.100636	Exceptional support to dairy and pigmeat producers due to the COVID-19 outbreak	07-12-2021
162	Estonia	SA.100927	COVID-19: Amendments to the schemes SA.59278, SA.62513, SA.57014 and SA.58783	21-12-2021
163	Finland	SA.61987	COVID-19: Direct development grant to undertakings in the fisheries sector to increase the use of under-exploited domestic fish	01-03-2021
164	Finland	SA.61959	COVID19 Modifications to SA.56995, SA.57059, SA.57221, SA.57231 and to SA. 57192	10-03-2021
165	Finland	SA.59132	COVID-19: aid to Finavia	17-03-2021

166	Finland	SA.62290	State Aid SA.62290 (2021/N) – Finland  COVID-19: Amendment to the scheme SA.57059 (2020/N) – COVID-19: Loan guarantee and subsidised interest rate loan scheme for undertakings most affected by COVID-19	21-04-2021
167	Finland	SA.63205	Support for uncovered fixed costs under Temporary Framework Section 3.12	09-06-2021
168	Finland	SA.63500	COVID-19: COVID-19: Temporary aid to undertakings in the fisheries sector, amending SA.57221, SA.57958, SA.59332 and SA.61959	28-06-2021
169	Finland	SA.100811	COVID19 Modifications to SA.56995 and SA.57059	20-12-2021
170	France	SA.59897	Amendement des mesures approuvées par les décisions SA.56709 (2020/N), SA.57502 (2020/N), SA.57989 (2020/N) et SA.58475 (2020/N) – France – COVID-19: Plan de sécurisation du financement des entreprises	12-01-2021
171	France	SA.60965	Covid-19: Régime d'aides sous la forme d'une compensation pour les congés payés acquis en période d'activité partielle	26-01-2021
172	France	SA.61330	COVID-19: Régime d'aides destinées à compenser les coûts fixes non couverts des entreprises	09-03-2021
173	France	SA.62102	France - COVID-19 – Amendment of State aid measures SA.56709, SA.56985, SA.56868, SA.57219, SA.57367, SA.57695, SA.57754 and SA.60965	16-03-2021
174	France	SA.62255	COVID-19 : Compensation for losses suffered by horticulturalists	19-03-2021
175	France	SA.59913	COVID-19 – Recapitalisation of Air France and the Air France – KLM Holding	05-04-2021
176	France	SA.62568	COVID-19 : crédit d'impôt exceptionnel d'accompagnement à la sortie du glyphosate en lien avec les difficultés rencontrées par les entreprises agricoles en raison de la crise de la COVID-19	12-05-2021
177	France	SA.63043	Amendement des mesures approuvées par les décisions SA.56709 (2020/N), SA.57502 (2020/N), SA.57989 (2020/N), SA.58475 (2020/N) et SA.59897 (2021/N) – COVID-19: Plan de sécurisation du financement des entreprises	02-06-2021
178	France	SA.63564	COVID-19 : compensations for beef cattle farmers	28-06-2021

179	France	SA.62999	COVID-19: Aid in the form of exemptions from social security contributions (« Régime d'aides sous forme d'exonérations de cotisations sociales »)	27-07-2021
180	France	SA.63656	COVID-19: Transition Fund for certain enterprises affected by the COVID-19 outbreak	14-09-2021
181	France	SA.100299	COVID-19 : aide spécifique de compensation des pertes dans le secteur de la viande bovine sur la période du 1er avril 2020 au 31 mars 2021	26-10-2021
182	France	SA.64114	COVID 19 - Compensation partielle des charges fixes des entreprises affectées par la crise COVID-19 en raison des mesures administratives d'interdiction d'accueil du public	26-11-2021
183	France	SA.100430	COVID-19 - Garantie au bénéfice d'Air France (prolongation de la mesure d'aide SA.57082)	01-12-2021
184	France	SA.100739	Amendment of the aid measure SA.59913: COVID-19 – Recapitalisation of Air France and the Air France – KLM Holding	17-12-2021
185	France	SA.100959	COVID-19: Modification des régimes d'aides SA.56709, SA.56985, SA.57367, SA.57695, SA.57754, SA.61330, SA.62568, SA.62999, SA.63656 et SA.100299 and SA.60965	20-12-2021
186	Germany	SA.59812	COVID 19 - Recapitalisation of TUI	04-01-2021
187	Germany	SA.61744	Modification and amendment to SA.56790, SA.59289, SA. 56814, SA.58504, SA.56787, SA.56863, SA.57100. SA.57447-Covid	12-02-2021
188	Germany	SA.62099	Second amendment of the COVID-19 airport scheme	16-03-2021
189	Germany	SA.63063	COVID-19: German Travel Insolvency Fund	09-07-2021
190	Germany	SA.100743	COVID19 modifications to SA.56790, SA.59289, SA.56814, SA.58504, SA.56787, SA.58021, SA.57100, and SA.57447	21-12-2021
191	Greece	SA.61573	Aid to KTEL and KTEL S.A. bus companies for the compulsory vacancy rate imposed, due to COVID -19 outbreak	18-02-2021
192	Greece	SA.61802	COVID-19: 2nd ROUND OF SUPPORT TO SME LOAN OBLIGATIONS DUE TO COVID-19	19-02-2021
193	Greece	SA.61916	COVID19 – Amendment to SA.59033 - Aid for cultural activities in the Municipality of Athens	19-02-2021



194	Greece	SA.61843	COVID 19-HR- MODIFICATIONS TO SA.56839, SA.58367, SA.58616 AND SA.58368	19-02-2021
195	Greece	SA.62095	Support to primary producers in the sectors of buffalo breeding, outdoor watermelon production, greenhouse crops production and summer and autumn potatoes production under the COVID-19 Temporary Framework	05-03-2021
196	Greece	SA.62098	WORKING CAPITAL FOR MICRO AND SMALL-MEDIUM START-UPS IN THE WHOLE COUNTRY, MEMBERS OF THE NATIONAL REGISTRY: ELEVATE GREECE	08-03-2021
197	Greece	SA.62264	COVID-19: Amendments of SA.58367 , SA.58616 and SA.59033	18-03-2021
198	Greece	SA.62171	COVID 19- aid to entities operating tourist buses and trains	23-03-2021
199	Greece	SA.58824	Covid 19: planned support in favour of Energean Oil & Gas	24-03-2021
200	Greece	SA.62016	3rd amendment to capped business loans portfolio guarantees for new working capital loans in COVID-19 outbreak	21-04-2021
201	Greece	SA.62626	COVID-19: Subsidy to food service enterprises	11-05-2021
202	Greece	SA.62341	COVID 19: Subsidies for SMEs (“Gefyra II”)	12-05-2021
203	Greece	SA.63123	COVID-19: Support to tourism sector	01-06-2021
204	Greece	SA.62835	Capped Business Loan Portfolio Guarantees for new loans in the construction sector during COVID-19 outbreak	11-06-2021
205	Greece	SA.63004	COVID-19-Aid to the audiovisual sector-EL	29-06-2021
206	Greece	SA.63570	COVID-19: Grants throughout the country for the agricultural sectors of i. Pig breeding, ii. Native black pig breeding and iii. Honey production	01-07-2021
207	Greece	SA.62081	COVID-19: Amendment to Repayable Advances Scheme (Round 5)	01-07-2021
208	Greece	SA.62699	COVID 19 – support to theatres and other cultural venues	05-07-2021
209	Greece	SA.63896	COVID 19 - Aid to Newspapers and Magazines, Regional Media Service Providers and Radio Stations - EL	27-07-2021

210	Greece	SA.64273	Amendment of the Repayable Advance Schemes for enterprises affected by the Covid-19 outbreak (Rounds 1-5)	05-08-2021
211	Greece	SA.61574	COVID-19: Aid scheme for uncovered fixed costs under the Temporary Framework	27-08-2021
212	Greece	SA.100006	COVID-19: Aid to electronic media providers (amendment to SA.63896 (2021/N))	12-10-2021
213	Greece	SA.100637	COVID-19: Amendment of the Repayable Advance Schemes for enterprises affected by the Covid-19 outbreak - Rounds 1-5 (amendments to SA.56815 as amended)	18-11-2021
214	Greece	SA.100534	COVID-19: Aid to port authorities in Greece	13-12-2021
215	Greece	SA.100951	COVID-19 - EL - Direct Grant to enterprises of North Evia affected by Covid-19	14-12-2021
216	Greece	SA.100904	“Financial aid to theaters, music stages, dance theaters, concert halls, performance venues and film companies and distributors of films, in dealing with the effects of COVID-19 for the year 2021”-	21-12-2021
217	Hungary	SA.60909	COVID-19- Scheme for supporting the employment of researchers and developers in all sectors affected by second wave of the coronavirus outbreak (Prolongation and modification of SA.57007)	23-01-2021
218	Hungary	SA.61329	2nd amendment request for the SA.59477 COVID-19: Scheme for the protection of the economy during the second state of emergency scheme	28-01-2021
219	Hungary	SA.60910	COVID-19 scheme for the reduction of local business tax rates applicable to small and medium-sized enterprises to moderate the effects of the coronavirus pandemic on the economy	29-01-2021
220	Hungary	SA.61842	Collective amendment of existing schemes under the fifth amendment of the Temporary Framework	17-02-2021
221	Hungary	SA.62250	SA.62250, SA.62359 and SA.62268: COVID-19 - Amendments to the schemes SA.57269, SA.58420, SA.57064 and SA.59477	29-03-2021
222	Hungary	SA.62359	SA.62250, SA.62359 and SA.62268: COVID-19 - Amendments to the schemes SA.57269, SA.58420, SA.57064 and SA.59477	29-03-2021
223	Hungary	SA.62268	SA.62250, SA.62359 and SA.62268: COVID-19 - Amendments to the schemes SA.57269, SA.58420, SA.57064 and SA.59477	29-03-2021

224	Hungary	SA.62449	7th amendment to SA.57468 (2020/N) - COVID-19: Umbrella scheme of direct grants provided from the appropriations managed at the level of ministries' budgetary chapters	12-04-2021
225	Hungary	SA.62363	COVID-19: Umbrella scheme supervised by the Cabinet Office of the Prime Minister to support the economy in the COVID-19 outbreak	16-04-2021
226	Hungary	SA.62560	COVID-19: Modification to SA.57121 (2020/N) - Loan guarantee scheme under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak	04-05-2021
227	Hungary	SA.62526	5th amendment to SA.56926 (2020/N) - COVID-19: Aid measures for increasing competitiveness of undertakings in relation with the COVID-19 outbreak	06-05-2021
228	Hungary	SA.62913	Fifth amendment to the scheme SA.59477: COVID-19: Scheme for the protection of the economy during the second state of emergency	12-05-2021
229	Hungary	SA.63066	COVID-19: 4th Amendment to SA.56994 (2020/N) on Aid from Structural Funds aiming at supporting undertakings affected by the economic repercussions of the COVID-19	28-05-2021
230	Hungary	SA.63175	COVID-19: Eighth amendment to SA.57468 (2020/N) - COVID-19: Umbrella scheme of direct grants provided from the appropriations managed at the level of ministries' budgetary chapters	02-06-2021
231	Hungary	SA.63616	Amendments to SA.58202 - COVID-19 Related R&D and production support scheme and SA.57468 - COVID-19 Umbrella scheme of direct grants	12-07-2021
232	Hungary	SA.64593	COVID-19: 8th amendment to SA.57064, 10th amendment to SA.57468, and 2nd amendment to SA.57007	08-09-2021
233	Hungary	SA.100796	COVID19 Modifications to SA.56926, SA.56994, SA.57064, SA.57121, SA.57198, SA.57269, SA.57329, SA.57468, SA.58202, SA.58420, SA.60910, SA.62363	17-12-2021
234	Ireland	SA.61617	COVID-19: Sustaining Enterprise Scheme (SA.57036, as amended by SA. 58043)	31-01-2021
235	Ireland	SA.59709	Ireland – COVID-19 - Aid to airport operators	23-02-2021
236	Ireland	SA.61236	COVID-19 Tourism Business Continuity Scheme	08-03-2021
237	Ireland	SA.62293	COVID 19: Liquidity aid to beef farmers	19-03-2021

238	Ireland	SA.62301	Ireland – Small Business Assistance Scheme for COVID (SBASC)	31-03-2021
239	Ireland	SA.62209	COVID19 - Amendments of SA.57453, SA.57465, SA.58214, SA.58955, SA.59719	19-04-2021
240	Ireland	SA.63067	COVID-19: Live Performance Support Scheme 2021	28-05-2021
241	Ireland	SA.63482	COVID-19: Expanded Small Business Assistance Scheme for COVID (SBASC) (amendments to SA.62301).	22-06-2021
242	Ireland	SA.63264	COVID-19: Regional Enterprise Transition Scheme	23-07-2021
243	Ireland	SA.63009	COVID-19: Aid to Licensed Bus Operators	05-08-2021
244	Ireland	SA.64443	COVID 19 Coach Tourism Business Continuity Scheme	20-08-2021
245	Ireland	SA.64412	COVID-19: Events Sector Covid Support Scheme	27-08-2021
246	Ireland	SA.100025	COVID-19 - IE -Events Sector Covid Support Scheme - Amendment SA 64412	07-10-2021
247	Ireland	SA.100526	COVID-19: Commercial Entertainment Capital Grant Scheme	01-12-2021
248	Ireland	SA.100717	COVID19 - IE - Prolongation and amendment of schemes SA.57453, SA.57465, SA.61236, SA.57036, SA.59709 and SA.63067	02-12-2021
249	Ireland	SA.100481	Amendment of SA.59709 - Ireland – COVID-19 - Aid to airport operators	03-12-2021
250	Ireland	SA.101046	COVID-19 - IE - Aid to Licenced Bus Operators (amendment to SA.63009)	20-12-2021
251	Italy	SA.60402	COVID-19: Amendment to SA.57891 - Direct grants to Italian companies engaging in international activities and operations	12-01-2021
252	Italy	SA.61599	COVID-19: Measures to support micro, small and medium-sized enterprises owning the service of distributing fuel on motorways for the COVID-19 emergency period	11-02-2021
253	Italy	SA.61438	COVID-19: Fourth Amendment of the scheme SA.57068 (2020/N)	11-02-2021
254	Italy	SA.61940	COVID-19: Partial exemption from the payment of social security contribution in disadvantaged areas.	18-02-2021
255	Italy	SA.61939	COVID-19: Exemption from social security contribution payments for private employers not applying for wage support measures	23-02-2021

256	Italy	SA.61774	COVID-19 vaccine development project by ReiThera S.r.l.	26-02-2021
257	Italy	SA.61841	COVID-19 Aid to organisers of international sport events - IT	16-03-2021
258	Italy	SA.61294	COVID-19 - Support to undertakings in the trade fair sector under section 3.12 TF	16-03-2021
259	Italy	SA.62420	COVID-19: Amendment to SA.57891 (2020/N), as already amended by SA.59655 (2020/N) and SA.60402 (2020/N): Direct grants to Italian companies engaging in international activities and operations	26-03-2021
260	Italy	SA.62356	Prolongation of and amendments to SA.59755 (2020/N) – Italy – COVID-19: Aid for tour operators and travel agencies and SA.59992 (2020/N) – Italy – COVID-19: Support measure for the congress and fair industry	29-03-2021
261	Italy	SA.62108	Covid 19: Compensation scheme for mooring companies	06-04-2021
262	Italy	SA.62495	COVID-19: amendment to SA.57021 – Regime Quadro– prolongation of the measures and increase of the aid ceilings related to the measures 3.1 and 3.12 of the Temporary Framework	09-04-2021
263	Italy	SA.62544	COVID-19: Modification to SA.57349 (2020/N)	12-04-2021
264	Italy	SA.62525	COVID 19: aid to shipping companies	14-04-2021
265	Italy	SA.62409	COVID-19: Modifications to SA.57005 and SA.57252 (2020/N)	16-04-2021
266	Italy	SA.62504	Covid-19 - Italy - Amendment of scheme SA.61294 (2021/N) - Italy - Covid-19 - Support to undertakings in the trade fair sector under section 3.12 TF	04-05-2021
267	Italy	SA.62793	Support measures for undertakings carrying out activities in the agricultural, forestry, fishery and aquaculture sectors and the activities related thereto, in relation with the Covid-19 outbreak crisis	06-05-2021
268	Italy	SA.62503	COVID 19: Aid to companies managing passenger port terminals	18-05-2021
269	Italy	SA.62799	COVID-19: Amendment to SA.58208 (2020/N) – Italy “COVID-19: Aid in the form of guarantees on loans and subsidised interest rates managed by the “Istituto per il Credito Sportivo” as provided by Article 14, Para 1 and 2 of Law Decree of 8 April 2020”	26-05-2021

270	Italy	SA.62718	COVID-19 - Support to road passenger transport	27-05-2021
271	Italy	SA.62576	Development Contracts under the COVID-19 Temporary Framework	08-06-2021
272	Italy	SA.63138	Covid 19 – Tax credit for audiovisual production companies – IT	10-06-2021
273	Italy	SA.63261	Italy - COVID-19 – Patrimonio Rilancio- Prolongation of SA.57612, as amended by SA.59677 (N/2020)	16-06-2021
274	Italy	SA.63375	State Aid SA. 63375 (2021/N) – Italy  COVID-19: State guarantee to support debt moratorium by banks to SME borrowers under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak – Amendment to the scheme SA.56690 as already amended by SA.57717 and SA.59655	17-06-2021
275	Italy	SA.63465	COVID-19: Direct grants to Italian companies engaging in international activities and operations SA.57891 (already amended by SA.59655, by SA.60402 and by SA.62420)	21-06-2021
276	Italy	SA.63597	COVID-19: Loan guarantee schemes under the Fondo di garanzia per le PMI – Amendment to the scheme SA.56966 as already amended by SA.57625 and SA.59655	29-06-2021
277	Italy	SA.63653	State Aid SA.63653 (2021/N) – Italy - COVID-19: Loan guarantee scheme to support the economy – Amendment to the scheme SA.56963 as already amended by SA.59681	29-06-2021
278	Italy	SA.63719	COVID-19: Exemption from social security contribution payments for self-employed workers affected by the economic effects of COVID-19 outbreak	14-07-2021
279	Italy	SA.63721	COVID-19: Exemption from social contributions for re-employment contracts	14-07-2021
280	Italy	SA.63720	COVID-19: Contribution waiver in the tourism, spas and commerce sectors	02-08-2021
281	Italy	SA.64217	COVID – Subsidised loans for large undertakings in temporary difficulty	16-08-2021
282	Italy	SA.64358	Prolongation State Aid SA.57289 (2020/N) as amended by State Aid SA.59681 (2020/N) – Italy - COVID-19: Capital-strengthening measures for medium-sized companies	16-08-2021



283	Italy	SA.64218	Garanzie e contributi in conto interesse concessi dall'Istituto per il Credito Sportivo sui Comparti per finanziamenti di liquidità di cui al D.L. 8/4/2020, n. 23, art. 14 commi 1 e 2.	17-08-2021
284	Italy	SA.64385	COVID 19 - Tax credit for culture	19-08-2021
285	Italy	SA.64357	non-repayable contribution to economic and commercial activities in the historic centres of municipalities where religious sanctuaries are present	20-08-2021
286	Italy	SA.64446	COVID-19: Measure of direct grant to compensate tourism-accommodation businesses.	15-09-2021
287	Italy	SA.64420	COVID-19: Exemption from contribution for hiring young people	16-09-2021
288	Italy	SA.64521	COVID- 19- Amendments to compensation scheme for mooring companies	16-09-2021
289	Italy	SA.64469	COVID-19 - Measure to support the tourist "open-buses" companies.	12-10-2021
290	Italy	SA.64776	COVID-19: Fifth Amendment of the scheme SA.57068 (2020/N)	12-10-2021
291	Italy	SA.100142	COVID-19: Aid to the pyrotechnics sector	18-10-2021
292	Italy	SA.100005	COVID-19: Exemption from social security contribution for the employment of women	27-10-2021
293	Italy	SA.62668	COVID-19 - IT - Automatic tax measures and non-repayable grants	27-10-2021
294	Italy	SA.100126	COVID-19: Support to road passenger transport (amendment to SA.62718)	04-11-2021
295	Italy	SA.64342	COVID-19: Aid to undertakings engaged in road passenger transport by bus	05-11-2021
296	Italy	SA.100420	COVID-19: Contribution waiver in the tourism, spas, commerce and cultural or recreational sectors	08-11-2021
297	Italy	SA.100091	COVID-19 - IT - Non repayable grant for start-ups	10-11-2021
298	Italy	SA.100155	COVID-19 - IT - Non repayable grant ("contributo perequativo")	10-11-2021
299	Italy	SA.100204	COVID-19 - IT - Tax Credit for the textile, fashion and accessories sector	10-11-2021
300	Italy	SA.100304	COVID-19: Fund to support closed economic activities	19-11-2021
301	Italy	SA.100597	COVID-19: Direct grants to SMEs engaging in international activities and operations for the digital	29-11-2021

			and green transitions (RRF)	
302	Italy	SA.100825	COVID-19: Prolongation of the scheme SA.63138 Tax credit for audiovisual production companies	14-12-2021
303	Italy	SA.100722	COVID-19 - IT - Support to entertainment agencies and tourist villages	15-12-2021
304	Italy	SA.100724	COVID-19 - IT - Measure of direct grant to compensate management bodies for tourism purposes of speleological sites and caves	15-12-2021
305	Italy	SA.100833	COVID-19: Prolongation of the schemes SA.57005 and SA.57252 (2020/N), as already amended	16-12-2021
306	Latvia	SA.60409	State Aid SA.60409 (2020/N) – Latvia  COVID-19 – Amendment of SA.56722	12-01-2021
307	Latvia	SA.60411	State Aid SA.60411 (2020/N) Latvia  COVID-19 – Amendment of SA.57655	12-01-2021
308	Latvia	SA.60412	COVID 19: Reduction of the lease payments for lessees of publicly-owned property	12-01-2021
309	Latvia	SA.60528	COVID 19 – LV - Reimbursement of tickets for cultural event organizers	18-01-2021
310	Latvia	SA.60960	Prolongation and amendment of Recapitalisation Fund (SA 57409- COVID 19 - Recapitalisation Fund)	01-02-2021
311	Latvia	SA.61338	Amendment to SA.59592 (2020/N) on Grants to companies affected by the COVID-19 crisis to ensure the flow of working capital	03-02-2021
312	Latvia	SA.61873	Second Amendment to SA.59592 (2020/N) on Grants to companies affected by the COVID-19 crisis to ensure the flow of working capital	28-02-2021
313	Latvia	SA.57756	Covid-19 Recapitalisation of Riga airport	08-03-2021
314	Latvia	SA.62128	Amendments to the aid scheme SA.59865 (2020/N): Procedure for granting, administration and monitoring of State support to agriculture and food in order to alleviate the negative impact of the COVID -19 outbreak	10-03-2021
315	Latvia	SA.61769	COVID-19 - Sustainability of cultural institutions affected by COVID-19	16-03-2021
316	Latvia	SA.62195	Procedures for granting state aid to small farmers	19-03-2021

317	Latvia	SA.62681	COVID-19: Amendments to the state aid scheme SA.57287 “State aid for short-term loans in agriculture to relieve a negative impact of COVID-19 spread”	30-04-2021
318	Latvia	SA.62631	COVID-19: State support to pig farming sector in order to alleviate the negative impact of the COVID-19 outbreak	07-05-2021
319	Latvia	SA.62003	COVID-19: Support to arts, entertainment and recreation businesses	11-05-2021
320	Latvia	SA.62916	Covid-19: Regulations regarding aid to shopping centres affected by the COVID-19 crisis	21-05-2021
321	Latvia	SA.62917	COVID-19: Regulations regarding aid to sports centres affected by the COVID-19 crisis	21-05-2021
322	Latvia	SA.62706	Procedure for granting, administration and monitoring of state support to poultry sector in order to mitigate the negative impact of the COVID -19 outbreak	27-05-2021
323	Latvia	SA.63046	COVID-19: Third Amendment to SA.59592 (2020/N) on Grants to companies affected by the COVID-19 crisis to ensure the flow of working capital	03-06-2021
324	Latvia	SA.63259	COVID-19: Modification to SA.62631 (2021/N)	08-06-2021
325	Latvia	SA.63031	COVID -19-Aid to Media– LV	18-06-2021
326	Latvia	SA.63307	COVID-19: Regulations regarding aid to shopping centres affected by the COVID-19 crisis (amendments to SA.62916)	22-06-2021
327	Latvia	SA.63308	COVID-19: Regulations regarding aid to sports centres affected by the COVID-19 crisis (amendments to SA.62917)	22-06-2021
328	Latvia	SA.63139	State Aid SA.63139 (2021/N) – Latvia  COVID-19: Second amendment to SA.56722  State Aid SA.63157 (2021/N) – Latvia  COVID-19: Third amendment to SA.57655	24-06-2021
329	Latvia	SA.63157	State Aid SA.63139 (2021/N) – Latvia  COVID-19: Second amendment to SA.56722  State Aid SA.63157 (2021/N) – Latvia  COVID-19: Third amendment to SA.57655	24-06-2021

330	Latvia	SA.64033	Procedures for the granting of State aid to mitigate the negative effects of Covid-19 spread in the micro-green production and in the fisheries and aquaculture sector	20-07-2021
331	Latvia	SA.64541	State aid for cattle breeding sector to mitigate negative impact of Covid-19 spread	13-09-2021
332	Latvia	SA.64382	COVID-19: Reimbursement of tickets for cultural event organizers (amendments to SA.60528)	24-09-2021
333	Latvia	SA.100665	COVID-19: Second Amendment to the scheme SA.62631 (2021/N)	02-12-2021
334	Latvia	SA.100599	Covid 19: Reimbursement of tickets for cultural eventorganizers” (amendments to SA.60528, as amended by SA.64382)	03-12-2021
335	Latvia	SA.100633	COVID-19 - LV - Tax Deferrals due to the Lockdown	06-12-2021
336	Latvia	SA.100609	Amendments to State Aid SA.64033 (2021/N) – Latvia COVID-19: State aid to mitigate the negative effects of COVID-19 outbreak in the micro-green production and in the fisheries and aquaculture sector	10-12-2021
337	Latvia	SA.100596	COVID-19: Fourth Amendment to SA.59592 (2020/N) on grants to companies affected by the COVID-19 crisis to ensure the flow of working capital	14-12-2021
338	Latvia	SA.100605	COVID 19: Reduction of the lease payment for lessees of publicly-owned property for the period 11 October to 31 December 2021	14-12-2021
339	Latvia	SA.100598	COVID-19 - LV - Support to taxpayers for the continuation of their activity under the conditions of the crisis caused by Covid-19	15-12-2021
340	Latvia	SA.100694	Regulation regarding aid to shopping and sports centers, cultural, recreational and entertainment sites affected by the Covid-19 crisis	17-12-2021
341	Lithuania	SA.60977	The Measure “Subsidies for Enterprises”	14-01-2021
342	Lithuania	SA.60632	COVID-19 - Deferral of tax payments	18-01-2021
343	Lithuania	SA.61067	COVID-19: Amendment of the Decision SA.60379 (2020/N)	18-01-2021
344	Lithuania	SA.61815	COVID-19: Prolongation of and amendments to the scheme SA.57008 (2020/N) – COVID-19: Aid Fund for Business	02-03-2021
345	Lithuania	SA.62484	COVID-19: Modifications to SA.57514, SA.57529, SA.57823 and SA.58856 (2020/N)	07-04-2021

346	Lithuania	SA.62306	The Measure “Subsidies to Enterprises Most Affected by COVID-19”	09-04-2021
347	Lithuania	SA.62580	The Measure “Subsidies for Enterprises”	13-04-2021
348	Lithuania	SA.62627	COVID19 – Compensation tour operators repatriation tourists	27-04-2021
349	Lithuania	SA.62833	COVID-19 - LT - Amendment to Deferral of tax payments (SA.60632)	07-05-2021
350	Lithuania	SA.62950	Temporary State Aid for the Pig and Poultry Sectors (Including the Production, Packaging and Processing of Eggs) for Losses due to COVID-19 Outbreak	21-05-2021
351	Lithuania	SA.63099	COVID-19: Modification to SA.57823 (2020/N)	28-05-2021
352	Lithuania	SA.63021	COVID-19 – Amendments of SA.57665 (2020/N) – COVID-19: Lithuanian guarantees and loans for tour operators, accommodation and catering service providers	31-05-2021
353	Lithuania	SA.63195	COVID-19: Second amendment of the existing aid scheme SA.60379	10-06-2021
354	Lithuania	SA.63496	COVID-19 – LT – Prolongation of Deferral of social security contributions (SA.58885)	25-06-2021
355	Lithuania	SA.63535	SA.63535-Covid 19: Modifications to SA.57529 (2020/N)	29-06-2021
356	Lithuania	SA.63603	COVID-19: Modification to SA.62950	02-07-2021
357	Lithuania	SA.64495	Lithuania COVID-19: Prolongation of SA.58645 (2020/N) – COVID-19 related research, development and production support scheme	20-09-2021
358	Lithuania	SA.100937	COVID-19 – LT – Prolongation of Deferral of social security contributions (SA.58885 as prolonged by SA.63496)	17-12-2021
359	Lithuania	SA.100910	Lithuania – COVID-19: Modification to SA.57823 (2020/N) – submeasure on limited amount of aid for pig farmers	22-12-2021
360	Lithuania	SA.101074	COVID-19: Prolongation of the schemes SA.57008, SA.57529 and SA.57665 (2020/N), as already amended	22-12-2021
361	Luxembourg	SA.60541	Covid-19: Modification of scheme on uncovered fixed costs (SA.59322)	08-01-2021

362	Luxembourg	SA.61954	COVID-19: Modifications to SA.59428	25-02-2021
363	Luxembourg	SA.61934	COVID19 - LUX - Further amendment to the aid scheme for uncovered fixed costs under the Temporary Framework (SA.59322 as amended by SA.60541)	01-03-2021
364	Luxembourg	SA.62239	COVID-19 aide au secteur porcin	18-03-2021
365	Luxembourg	SA.62500	Covid19 modifications to SA.57305, SA.56805, SA.56742	21-04-2021
366	Luxembourg	SA.62951	COVID 19 - LUX - Further amendment to the aid scheme for uncovered fixed costs under the Temporary Framework (SA.59322 as amended by SA.60541 and SA.61934)	20-05-2021
367	Luxembourg	SA.63309	Amendments to SA.59322 (2020/N) and SA.59428 (2020/N)	14-06-2021
368	Luxembourg	SA.100857	COVID19 - Modification of SA.59428, SA.59322 and SA.57305	15-12-2021
369	Malta	SA.60675	COVID19 Modifications to SA.56843, SA.57076, SA.57204, SA.57163, SA.57961, SA.58006, SA.58297, SA.58306	14-01-2021
370	Malta	SA.62735	COVID Amendment to the schemes SA.58297 - Temporary State Aid to Animal Farmers and SA.58306 - Temporary State Aid to Land Farmers	04-05-2021
371	Malta	SA.62499	Malta - Covid 19: Amendment and prolongation of schemes SA.56843, SA.57163 and SA.57961	12-05-2021
372	Malta	SA.62220	Covid-19 MT - Amendment of aid scheme SA.57076 (2020/N) – Wage Supplement Scheme under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak	26-05-2021
373	Malta	SA.63304	SA.63304: Amendment to SA.57204 Investment Aid for the Production of COVID-19 Relevant Products and SA.58006 Support to entrepreneurs affected by the spread of COVID-19.	28-06-2021
374	Malta	SA.100157	COVID-19 Interest Rate Subsidy Scheme	15-10-2021
375	Malta	SA.100440	COVID-19 Financial Aid Grant Scheme for Fishers	16-11-2021
376	Malta	SA.64380	COVID-19: Aid to undertakings in tourism and directly related sectors	26-11-2021



377	Netherlands	SA.61360	COVID-19: New compensation scheme for special transport providers	09-02-2021
378	Netherlands	SA.60166	COVID-19: Amendment TVL (SA.59535 (2020/N)) Direct Grants Scheme Fixed Costs SMEs	09-02-2021
379	Netherlands	SA.61300	COVID-19: Aid to zoos under Section 3.1 Temporary Framework	12-02-2021
380	Netherlands	SA.62241	NL_EZK_B&I_TOP amendments to the second extension of the Dutch COVID-19 State aid scheme 'Regeling subsidie vaste lasten financiering COVID-19 for Q1 2021'	12-03-2021
381	Netherlands	SA.62129	COVID-19 Second amendment to SA.57850 (2020/N)	25-03-2021
382	Netherlands	SA.62271	COVID 19: SGR voucher credit facility	30-03-2021
383	Netherlands	SA.62556	State Aid SA.62556 (2021/N) – The Netherlands  COVID-19: Soft bridge loans with subsidised interest rates	30-04-2021
384	Netherlands	SA.62867	COVID-19: Regulation on the financing of fixed costs for starting SMEs COVID-19	20-05-2021
385	Netherlands	SA.62816	NL-LNV-AGRO-DAD Demolition and conversion of the fur animals husbandry (modification SA.41842) - COVID-19	31-05-2021
386	Netherlands	SA.62944	SA.62944 (2021/N) – The Netherlands COVID-19: Amendment of two existing aid schemes (SA.56914 and SA.57397) in accordance with the fifth amendment of the Temporary Framework	01-06-2021
387	Netherlands	SA.63257	COVID-19: Fourth amendment of the direct grant scheme to support the fixed costs for enterprises affected by the COVID-19 outbreak (amendments to SA.57712, SA.59535, SA.60166, SA.62241)	22-06-2021
388	Netherlands	SA.63576	NL_LNV_AGRO_EIA Aid scheme financing uncovered fixed costs agricultural and horticultural undertakings COVID-19	29-06-2021
389	Netherlands	SA.63984	COVID-19: Fifth amendment of the direct grant scheme to support the fixed costs for enterprises affected by the COVID-19 outbreak (amendments to SA.57712, SA.59535, SA.60166, SA.62241, SA.63257)	26-07-2021
390	Netherlands	SA.64370	COVID-19: State loans for travel guarantee funds	20-08-2021

			(Amendments to SA.57985)	
391	Netherlands	SA.100202	NL_LNV_AGRO_EIA_Modification to SA.63576 (2021/N) - NL LNV AGRO EIA Aid scheme financing uncovered fixed costs agricultural and horticultural undertakings COVID-19	15-10-2021
392	Netherlands	SA.100306	COVID-19: Extension of SA.61360 with increased budget (special transport in the Netherlands)	09-11-2021
393	Netherlands	SA.100829	COVID-19: Sixth amendment of the direct grant scheme to support the fixed costs for enterprises affected by the COVID-19 outbreak (amendments to SA.57712, SA.59535, SA.60166, SA.62241, SA.63257 and SA.63984)	10-12-2021
394	Netherlands	SA.100953	NL_LNV_AGRO_EIA_Modification to SA.63576 and SA.100202 (2021/N) - NL LNV AGRO EIA Aid scheme financing uncovered fixed costs agricultural and horticultural undertakings COVID-19	22-12-2021
395	Poland	SA.60940	Modification of SA.59763 COVID-19: The Financial Shield for SME 2.0 (extension of the list of sectors addressed by the scheme)	12-01-2021
396	Poland	SA.60376	Support to undertakings affected by restrictions applied to industries whose activities may contribute to the spread of the COVID-19 pandemic	20-01-2021
397	Poland	SA.61173	State aid in the form of low-interest loan for non-governmental organizations and co-financing of remuneration and contributions for church legal persons and their organizational units to support entities affected by the COVID-19	09-02-2021
398	Poland	SA.59872	COVID-19: Second amendment of SA.57306 (2020/N)	26-02-2021
399	Poland	SA.61825	New support to industries affected by the COVID-19 pandemic.	11-03-2021
400	Poland	SA.62078	Prolongation of SA.56876, SA.56896, SA.56922, SA.56996, SA.57015, SA.57054, SA.57055, SA.57065, SA.57172, SA.57191, SA.57452, SA.57519, SA.59763 and SA.60376	16-03-2021
401	Poland	SA.62597	COVID-19: Interest rate subsidies for farmers	20-04-2021
402	Poland	SA.62472	COVID-19: Leasing guarantees combined with the Pan-European Guarantee Fund in response to COVID-19	06-05-2021

403	Poland	SA.62231	COVID-19: Amendments to SA.58102 and aid in the form of limited amounts of aid (Section 3.1 TF)	02-06-2021
404	Poland	SA.62752	COVID-19 -The Polish anti-crisis measures – aid for damage compensation and to improve the liquidity of undertakings affected by the COVID-19 outbreak 2.0 and amendments to schemes SA.57054 and SA.57306	17-06-2021
405	Poland	SA.62885	Amendment of SA.61825 (2021/N) - New support to industries affected by the COVID-19 pandemic.	21-06-2021
406	Poland	SA.62603	COVID 19- support to bus operators	24-06-2021
407	Poland	SA.64285	Second amendment of SA.61825 (2021/N) - “Subsidy schemes to industries affected by the COVID-19”.	04-08-2021
408	Poland	SA.100902	COVID-19: Prolongation and amendment of the schemes SA.56876(2020/N), SA.56896 (2020/N), SA.56922 (2020/N), SA.56996 (2020/N), SA.57015 (2020/N), SA.57054 (2020/N), SA.57055 (2020/N), SA.57065 (2020/N), SA.57172 (2020/N), SA.57191 (2020/N), SA.57306 (2020/N), SA.57452 (2020/N), SA.57519 (2020/N), SA.58102 (2020/N), SA.59763 (2020/N), SA.60376 (2020/N), SA.61173 (2021/N), SA.61825 (2021/N), SA.62472 (2021/N), SA.62603 (2021/N) and SA.62752 (2021/N)	22-12-2021
409	Portugal	SA.61209	COVID-19: Direct grants to micro, small and medium companies in specific sectors. Measure “APOIAR RENDAS”	20-01-2021
410	Portugal	SA.61758	COVID-19: Direct grants to micro, small and medium undertakings in specific sectors established in the Outermost Region of the Azores Measure called “APOIAR.PT Açores”	10-02-2021
411	Portugal	SA.61048	Amendment to SA.59450 (2020/N) - “COVID-19: Direct grants to micro, small and medium companies in specific sectors” - measures “Apoiar.PT” and “Apoiar Restauração”	20-02-2021
412	Portugal	SA.62023	COVID-19: Direct grants to micro, small and medium undertakings in specific sectors established in the Outermost Region of the Azores "APOIAR.PT Açores – 4º T 2020"	01-03-2021
413	Portugal	SA.62091	COVID-19: Programa de Manutenção do Emprego II	31-03-2021
414	Portugal	SA.62090	COVID19 – Scheme to support undertakings Azores	16-04-2021
415	Portugal	SA.62587	COVID-19 Programa de Apoio à Liquidez designado por Programa APOIAR.PT Açores – 1º T 2021	21-04-2021

416	Portugal	SA.62506	COVID-19 Support to R&D projects, testing - infrastructures and production of COVID 19 related products - prolongation until December 2021	23-04-2021
417	Portugal	SA.62136	COVID-19 - Support scheme to operational costs 2020 - PACO	26-04-2021
418	Portugal	SA.61240	COVID-19 – PT – Wage subsidies to preserve employment in the Azores	27-04-2021
419	Portugal	SA.62505	COVID-19: Amendment of SA.56873 Direct grant scheme and loan guarantee scheme	30-04-2021
420	Portugal	SA.62507	COVID-19: Amendment of SA.57494 - Direct grant and loan guarantee scheme – Autonomous Region of Madeira	30-04-2021
421	Portugal	SA.62647	Liquidity Incentive System for micro, small and medium undertakings in the Outermost Region of Madeira in the context of the COVID-19 pandemic. Measure called “Programa APOIAR.PT.Madeira”	07-05-2021
422	Portugal	SA.63010	COVID-19: Support to the bus transport sector in Azores	04-06-2021
423	Portugal	SA.63378	COVID-19: Direct grants to micro, small and medium-sized enterprises in specific sectors established in the Outermost Region of the Azores. Measure called “APOIAR.PT Açores – 2ºT 2021”	28-06-2021
424	Portugal	SA.64041	COVID-19: Financial support for companies in the sugarcane processing sector operating in Madeira	29-07-2021
425	Portugal	SA.63549	COVID-19: Direct grant scheme and loan guarantee scheme (amendments to SA.56873)	06-08-2021
426	Portugal	SA.64523	Support Programme for Maintenance of Employment in Agriculture (SME-AGRI)	01-09-2021
427	Portugal	SA.64599	Incentivo Regional às Empresas de Transporte Coletivo Regular de Passageiros para mitigação dos efeitos económico financeiros provocados pela pandemia Covid 19 – Ano de 2021	13-09-2021
428	Portugal	SA.100810	COVID-19: Prolongation of the schemes SA.56873, SA.56886, SA.57035, SA.57494, SA.59450, SA.61209, SA.62647 and SA.64041, as already amended	16-12-2021
429	Romania	SA.61231	Amendment of the scheme SA.58166 (2020/N) as amended by SA.59970 (2020/N) concerning COVID-19: support for SMEs and some large enterprises to overcome the economic crisis caused by the COVID-	21-01-2021

			19 pandemic	
430	Romania	SA.60650	Covid-19: aid to tourism businesses, accomodation units, food units and travel agencies.	14-04-2021
431	Romania	SA.62827	COVID-19: Support of the activity of cattle breeders in 2021 in the context of the economic crisis generated by COVID-19	20-05-2021
432	Romania	SA.63040	COVID-19: Second prolongation of the existing aid scheme SA.57408	25-05-2021
433	Romania	SA.63318	SA.63318 Amendment to SA.58166 Support for SMEs and certain related large enterprises to overcome the economic crisis caused by the COVID-19 pandemic	17-06-2021
434	Romania	SA.62608	COVID-19: Aid to the independent cultural sector in Bucharest	18-06-2021
435	Romania	SA.63354	COVID-19: Third amendment of the existing aid scheme SA.56895	30-06-2021
436	Romania	SA.63562	COVID-19: First amendment of the existing aid scheme SA.58462	30-06-2021
437	Romania	SA.63334	COVID-19 - Prolongation of Incentive scheme for airlines operating at Sibiu airport	02-07-2021
438	Romania	SA.63319	Romania COVID 19 Incentive scheme for airlines operating at Targu Mures airport	07-07-2021
439	Romania	SA.63550	COVID-19: Support to tourism, public food services and event organisers	13-07-2021
440	Romania	SA.64092	COVID 19 – Aid to airlines at Maramures International Airport	28-09-2021
441	Romania	SA.100195	COVID-19: Support for SMEs in order to overcome the economic crisis generated by the COVID-19 pandemic - productive investments	27-10-2021
442	Romania	SA.64595	Notification of the "State aid scheme for the support of sports clubs in Miercurea-Ciuc in the context of the current Covid-19 pandemic "	22-11-2021
443	Romania	SA.100666	COVID19: State aid scheme for granting financial support to economic operators managing airports	13-12-2021
444	Romania	SA.64591	COVID 19 - State aid to sports clubs in the	15-12-2021

			Municipality of Sfântu Gheorghe	
445	Romania	SA.100996	COVID19 Modifications to SA.56895; SA.57408; SA.100195; SA.58166; SA.59156; SA.64092; SA.63319; SA.62608	22-12-2021
446	Slovakia	SA.60212	Covid 19 – Aid for professional sport clubs – SK	15-01-2021
447	Slovakia	SA.61931	COVID-19: Second amendment to SA.57483 (2020/N)	23-02-2021
448	Slovakia	SA.62004	COVID-19: Second modification of SA.56986 (2020/N) – Temporary Framework aid for preserving employment and self-employment	17-03-2021
449	Slovakia	SA.62727	Covid 19 – Amendment of the aid scheme for professional sport clubs – SK	30-04-2021
450	Slovakia	SA.62256	COVID 19 – support to the tourism sector	03-05-2021
451	Slovakia	SA.62712	COVID-19: Second amendment of SA.58054 (2020/N): ESIF Liquidity Support State Aid Scheme for Innovative Companies with Limited Access to Credit Facilities	03-05-2021
452	Slovakia	SA.63294	SA.63294 (2021/N) – Slovakia COVID-19: Temporary Framework aid for preserving employment and self-employment (amendments to SA.56986)	21-06-2021
453	Slovakia	SA.63394	COVID-19 - Second Amendment to SA.57484 and SA.57485 under the Temporary Framework	28-06-2021
454	Slovakia	SA.63467	COVID-19 - Prolongation of aid scheme to airport operators (SA.59240)	08-07-2021
455	Slovakia	SA.64148	COVID-19: Support for professional sport clubs II	06-08-2021
456	Slovakia	SA.64415	COVID-19: State aid scheme to safeguard liquidity for travel agencies	09-09-2021
457	Slovakia	SA.64688	COVID-19: Amendments to SA.57599 (as amended by SA.59809) and SA.59996	07-10-2021
458	Slovakia	SA.100845	COVID-19 - SK- Prolongation and amendment of SA.59240 and SA.62256	14-12-2021
459	Slovakia	SA.100900	COVID-19: Amendment of the scheme SA.57599 (2020/N), as already amended in case SA.64688 (2021/NN)	16-12-2021
460	Slovakia	SA.100963	COVID-19: Amendment of the schemes SA.57484 and SA. 57485, as already amended.	16-12-2021

461	Slovakia	SA.101016	State Aid SA.101016 (2021/N) – Slovakia COVID-19: Temporary Framework aid for preserving employment and self-employment (amendments to SA.56986)	21-12-2021
462	Slovakia	SA.100962	COVID-19 - Prolongation of SA.64148 – Support to professional sport clubs II	21-12-2021
463	Slovenia	SA.60415	COVID-19 Modifications to SA.56999, SA.57143, SA.57782 amended by SA.58471, SA.57724 and SA.57558	08-01-2021
464	Slovenia	SA.61019	COVID-19: New scheme of direct grants	14-01-2021
465	Slovenia	SA.59943	COVID-19: Amendment to SA.59099 (2020/N) on additional intervention measures scheme	14-01-2021
466	Slovenia	SA.60951	Amendment to COVID-19 – Aid in the form of partial reimbursement of the uncovered fixed costs	22-01-2021
467	Slovenia	SA.61324	COVID-19: Amendment of the scheme SA.56999 (2020/N) - Intervention measures to mitigate the effects of the SARS COV2 (COVID-19) infectious disease epidemic on the economy	30-01-2021
468	Slovenia	SA.61211	Reduction of the annual concession fee for hunting ground managers for 2020	11-02-2021
469	Slovenia	SA.62041	COVID-19: Second amendment to the SA.57724 (2020/N) Zero interest and soft loans scheme	11-03-2021
470	Slovenia	SA.62118	COVID-19: Financial compensation for loss of income to holders of ancillary activities on the farm	15-03-2021
471	Slovenia	SA.61920	State Aid SA.61920 (2021/N) – Slovenia- Amendment to SA.57558 (2020/N) on additional intervention measures scheme (Short-time work scheme, wage subsidies for June, cableways, agriculture land)	16-03-2021
472	Slovenia	SA.61928	State Aid SA.61928 (2021/N) – Slovenia - Amendments to the schemes: SA.57558, as amended by SA.59943, (2020/N) COVID-19: additional intervention measures scheme, and SA.61019 (2020/N) COVID-19: new scheme of direct grants	16-03-2021
473	Slovenia	SA.62223	Aid to compensate for the loss of income of apples growers due to COVID-19 outbreak.	18-03-2021
474	Slovenia	SA.62332	COVID-19: Financial compensation for loss of income in the wine sector due to the second wave of the COVID-19 outbreak	23-03-2021



475	Slovenia	SA.62686	Financial compensation for loss of income in pig farming as a result of the second wave of the COVID-19 epidemic for the period from 1 November 2020 to 31 January 2021	06-05-2021
476	Slovenia	SA.62926	Financial compensation for loss of income from the rearing of small ruminants as a result of the second wave of the COVID-19 epidemic for the period from 1 October 2020 to 31 January 2021	18-05-2021
477	Slovenia	SA.62977	Financial compensation for beef cattle production due to the consequences of the second wave of the COVID-19 epidemic for the period from 1 October 2020 to 31 March 2021	26-05-2021
478	Slovenia	SA.63194	COVID 19: Financial compensation to food potato producers for the consequences of the second wave of the COVID-19 epidemic for the period from 1 October 2020 to 31 March 2021	07-06-2021
479	Slovenia	SA.63088	COVID-19: Amendment to SA.57782 (2020/N) - COVID-19: Support for SMEs and for COVID-19 related RDI and investment projects	07-06-2021
480	Slovenia	SA.63498	Amendment of State aid scheme SA.59124 – COVID-19: Re-establishment of air connectivity of Slovenia	13-07-2021
481	Slovenia	SA.64098	Reduction of leases of agricultural land managed by the Agricultural Land and Forest Fund of the Republic of Slovenia due to COVID-19	29-07-2021
482	Slovenia	SA.64238	Slovenia Covid-19 – Aid for MICE industry	29-07-2021
483	Slovenia	SA.64152	Aid for financing the holiday pay	30-07-2021
484	Slovenia	SA.64194	COVID-19: Renewal of the measure "Exemption from the payment of water compensation and the payment for water rights"	03-08-2021
485	Slovenia	SA.64318	COVID-19: Assistance to the operators of cableway installations	12-08-2021
486	Slovenia	SA.64421	Slovenia COVID-19 – Aid in the form of subsidised interest rates for loans	14-09-2021
487	Slovenia	SA.64606	COVID-19: Modification to SA.62118 (2021/N)	23-09-2021
488	Slovenia	SA.100855	COVID-19 – Support for self-employed, managers and farmers in form of a partial compensation for the lost income due to the quarantine	13-12-2021
489	Spain	SA.59723	Covid-19 – Fourth amendment to SA.56851 (2020/N) – Umbrella Scheme	19-02-2021
490	Spain	SA.61875	COVID-19 Amendment of decisions SA.56851,	14-03-2021

			SA.57019 and SA.57659	
491	Spain	SA.62838	Spain – Covid-19 - Amendment of SA.56851 (2020/N) and SA.57019 (2020/N)	18-05-2021
492	Spain	SA.63690	COVID-19: Trade credit reinsurance scheme (Prolongation)	01-07-2021
493	Spain	SA.62067	Spain COVID 19- Recapitalisation Fund for certain enterprises affected by the COVID-19 outbreak	19-07-2021
494	Spain	SA.100974	COVID-19: Prolongation and amendments of the schemes SA.56851, SA.57019, 57659, and SA.62067, as already amended.	21-12-2021
495	Sweden	SA.59639	COVID-19: aid scheme for travel agencies and tour operators	28-01-2021
496	Sweden	SA.61486	COVID-19: Continuation of the Government guarantee programme for companies	04-02-2021
497	Sweden	SA.60275	Compensation scheme for undertakings faced with turnover losses due to COVID-19 in August 2020–February 2021	12-02-2021
498	Sweden	SA.61672	COVID-19: Rent rebate for tenants - Prolongation of State Aid SA.56972 (2020/N)	23-02-2021
499	Sweden	SA.61904	COVID19 - Aid to ensure access to ambulance air transport	05-03-2021
500	Sweden	SA.61298	COVID-19: Loans to Traffic Control Services	10-03-2021
501	Sweden	SA.62190	COVID19 Modifications to SA.60275	11-03-2021
502	Sweden	SA.62272	COVID-19: Rent rebate for tenants - Amendments to SA.56972 (2020/N) and SA.61672 (2021/NN)	31-03-2021
503	Sweden	SA.62726	COVID-19 - Prolongation shipping aid (SA.59863)	04-06-2021
504	Sweden	SA.63263	Prolongation of compensation scheme for undertakings faced with turnover losses due to COVID-19 to May-Sept 2021	15-06-2021
505	Sweden	SA.63162	COVID-19: Rent rebate for tenants – Amendment SA.62272	16-06-2021
506	Sweden	SA.63130	COVID-19 Aid to ensure access to ambulance air transport	17-06-2021
507	Sweden	SA.63289	COVID-19 - Prolongation of aid scheme to Traffic Control Services	22-06-2021
508	Sweden	SA.63116	COVID 19 Aid for cancelled or restricted events June-December 2021	02-07-2021

509	Sweden	SA.63898	COVID-19 - State loan to SAS Consortium	09-07-2021
510	Sweden	SA.63727	COVID-19: Aid scheme for travel agencies and tour operators II (amendments of SA.59639)	12-07-2021
511	Sweden	SA.63337	COVID-19-liquidity support to mink fur producers	15-07-2021
512	Sweden	SA.100381	COVID-19: Amendment to SA.56860 prolonged in case SA.58659 and SA.61486 - Government guarantee programme for companies	11-11-2021
513	Sweden	SA.100728	COVID-19: Amendment of compensation scheme for undertakings with turnover losses due to COVID-19 (amendments to SA.60275, as prolonged by SA.62190 and SA.63263)	01-12-2021
514	Sweden	SA.100911	COVID 19 Aid for cancelled or restricted events June-December 2021 (prolongation)	13-12-2021

## ANNEX 2.

### State aid decisions Covid-19 related, adopted directly under the Treaty by country

Nr	Member State	Case	Title	Decision date
1	Austria	SA.60655	COVID-19 – Amendments to the existing aid scheme for the provision of rail freight services in certain forms of production and prolongation of temporary support for rail freight and passenger transport	24-01-2021
2	Austria	SA.60521	COVID-19: State guarantee to package travel organisers and facilitators of linked travel services	04-02-2021
3	Austria	SA.63287	COVID-19; Support Scheme for Events II	05-07-2021
4	Austria	SA.100991	COVID-19; Support Scheme for Events II	21-12-2021

5	Belgium	SA.60548	COVID-19: Prolongation of and Amendment to SA.57188 – Reinsurance of short-term credit and surety risks	25-01-2021
6	Belgium	SA.59765	COVID-19: Aid to the Waterloo 1815 Memorial concession holder	18-05-2021
7	Belgium	SA.61709	Air Belgium SA	24-06-2021
8	Belgium	SA.62160	Mesure temporaire de réduction de la redevance pour le trafic ferroviaire commercial de voyageurs	17-12-2021
9	Belgium	SA.62498	Projet d'arrêté royal modifiant l'arrêté royal du 21 décembre 2013 fixant les règles provisoires qui valent comme contrat de gestion d'Infrabel et de la SNCB – Mesure temporaire de réduction du coût de la redevance d'infrastructure pour le trafic ferroviaire de fret.	17-12-2021
10	Czechia	SA.61912	COVID-19: Amendment of the support scheme for Spas (SA.58018)	09-03-2021
11	Czechia	SA.62375	COVID-19: Damage compensation scheme for rail passenger transport operators	30-07-2021
12	Denmark	SA.61056	Prolongation and adjustment of State Aid SA.56685 as amended by SA.57209 and SA.59667 – Compensation scheme for cancellation of events caused by COVID-19	20-01-2021
13	Denmark	SA.61044	Prolongation of SA.59055 Temporary targeted fixed cost compensation scheme for companies affected by COVID 19 prohibitions (bans and cancelled events)	20-01-2021
14	Denmark	SA.61945	Aid scheme for mink farmers and related businesses affected by the COVID-19 out-break.	07-04-2021

15	Denmark	SA.62444	Notification of prolongation and adjustment of State Aid SA.56685 as amended by SA.57209, SA.59667 and SA.61056 – Compensation scheme for cancellation of events caused by COVID-19	14-04-2021
16	Denmark	SA.62132	Prolongation till 5 April 2021 of SA.59055 Temporary targeted fixed cost compensation scheme for companies affected by COVID 19 prohibitions (bans and cancelled events)	27-04-2021
17	Denmark	SA.62226	COVID-19: Re-activating SA.57932 targeted compensation scheme for companies' fixed costs (closed borders and travel restrictions)	07-05-2021
18	Denmark	SA.62538	Supplementary element to SA.57930 for undertakings with mixed activities; targeted fixed cost compensation scheme for companies affected by COVID 19 prohibitions	30-06-2021
19	Denmark	SA.63389	Notification of prolongation and adjustment of State Aid SA.56685 as amended by SA.57209, SA.59667, SA.61056 and SA.62444– Compensation scheme for cancellation of events caused by COVID-19	01-07-2021
20	Denmark	SA.63904	Fourth amendment of Temporary targeted compensation scheme SA. 57930 for companies affected by COVID-19 related prohibitions (bans and cancelled events)	12-07-2021
21	Denmark	SA.64032	COVID-19: Third amendment of compensation scheme SA.56774	26-07-2021
22	Denmark	SA.62391	COVID-19 - Waiver of infrastructure access charges for public passenger transport services by rail	30-07-2021
23	Denmark	SA.62217	COVID-19 - Aid scheme for cultural institutions for the summer 2020	04-08-2021

24	Finland	SA.60113	Finnair – COVID-19 - hybrid loan 107.2.b	12-03-2021
25	Finland	SA.59132	COVID-19: aid to Finavia	17-03-2021
26	France	SA.60523	Aide d'État SA.60523 (2020/N) – France Amendement de la décision SA.57607 (2020/N) – France – COVID-19: Garantie de l'État en soutien à l'assurance-crédit	13-01-2021
27	France	SA.59746	COVID 19 - Compensation des clubs sportifs et organisateurs d'événements sportifs-FR	25-01-2021
28	France	SA.58639	COVID-19: Dispositif de garantie aux fonds de prêts participatifs et d'obligations subordonnées	03-03-2021
29	France	SA.60949	COVID19 - Régime d'aides destiné à compenser les coûts d'exploitation des sociétés de remontées mécaniques	19-03-2021
30	France	SA.63316	Amendement des mesures approuvées par les décisions SA.56903 (2020/N) et SA.59571 (2020/N) – COVID-19: State guarantee for the reinsurance cover of domestic trade credit insurance risks	18-06-2021
31	France	SA.63563	COVID 19 - Compensation des clubs sportifs et organisateurs d'événements sportifs (modifications)	20-08-2021
32	France	SA.62193	Covid-19: Compensation du dommage subi par Brittany Ferries en raison de l'épidémie de COVID-19	23-09-2021
33	France	SA.62625	COVID 19 - Compensation des loyers et charges locatives des commerces de détail et de certains services interdits d'accueil du public en raison de la crise COVID-19	15-10-2021
34	France	SA.100430	COVID-19 - Garantie au bénéfice d'Air France (prolongation de la mesure d'aide SA.57082)	01-12-2021
35	Germany	SA.60045	November Assistance Extra under Article 107 (2)(b) TFEU-Covid	21-01-2021

36	Germany	SA.59173	COVID-19: Federal umbrella scheme for damage compensation of fairs and congresses	22-01-2021
37	Germany	SA.62099	Second amendment of the COVID-19 airport scheme	16-03-2021
38	Germany	SA.62763	Germany - COVID-19 - Amendment of an existing aid scheme for rail freight transport	21-05-2021
39	Germany	SA.62784	Covid-19 - Art. 107 2b Federal Umbrella Scheme	28-05-2021
40	Germany	SA.63617	Germany – COVID-19 aid to Condor Flugdienst GmbH	26-07-2021
41	Germany	SA.63635	Germany - COVID-19 - Amendment of an existing aid scheme for rail freight transport and temporary support for long-distance rail passenger transport providers	30-07-2021
42	Germany	SA.63846	Covid 19 – Damage compensation for Deutsche Bahn AG	10-08-2021
43	Germany	SA.64720	COVID-19 -Temporary grant of federal aid in the form of compensation for organisers of trade fairs and exhibitions	08-10-2021
44	Germany	SA.64494	Prolongation of SA.59173(2020/N): COVID-19: Federal umbrella scheme for damage compensation of fairs and congresses	11-11-2021
45	Germany	SA.100944	Prolongation and Modification of SA.62784	21-12-2021
46	Germany	SA.63847	COVID-19: Damage compensation for DB AG to cover damages incurred by DB Cargo	22-12-2021
47	Greece	SA.62095	Support of the producers in sectors of i.Buffalo breeding throughout the country, ii.Outdoor watermelon throughout the country, iii. Greenhouse crops throughout the country except from Crete in tomatoes and cucumbers, iv. Summer and autumn potatoes t	05-03-2021
48	Greece	SA.62052	COVID-19 Aid to Athens international Airport	26-07-2021



49	Ireland	SA.59709	Ireland – COVID-19 - Aid to airport operators	23-02-2021
50	Ireland	SA.100481	Amendment of SA.59709 - Ireland – COVID-19 - Aid to airport operators	03-12-2021
51	Italy	SA.59518	COVID-19: Aid to Toscana Aeroporti	01-03-2021
52	Italy	SA.59346	COVID-19 - Damage compensation to commercial rail passenger operators	10-03-2021
53	Italy	SA.59376	COVID-19 - Reduction of track access charges for rail freight and commercial rail passenger services	24-03-2021
54	Italy	SA.61676	Covid 19 – Alitalia damage compensation III	26-03-2021
55	Italy	SA.62542	Covid 19 – Alitalia damage compensation IV	12-05-2021
56	Italy	SA.62762	Prolongation of the COVID-19 scheme for the reduction of track access charges for rail freight and commercial rail passenger services	09-06-2021
57	Italy	SA.63234	Italy, Covid 19 - Alitalia damage compensation V	02-07-2021
58	Italy	SA.62392	COVID-19: damage compensation for tour operators and travel agencies	08-07-2021
59	Italy	SA.63074	Damage compensation scheme for airport infrastructure managers and ground handling operators in Italy	26-07-2021
60	Italy	SA.63534	COVID-19: Compensation for ski lift companies	04-08-2021
61	Italy	SA.62152	COVID-19 – Amendment to the damage compensation scheme for airlines with an EU operating license delivered by Italy	09-08-2021
62	Italy	SA.63317	COVID-19: Italy - compensation scheme for fairs and congresses	30-08-2021
63	Italy	SA.63652	Second prolongation of the COVID-19 scheme for the reduction of track access charges for rail freight and commercial rail passenger services	14-09-2021

64	Italy	SA.62539	COVID-19: Damage compensation to the Calabrian airports	14-12-2021
65	Latvia	SA.101032	COVID-19: Damage compensation to airBaltic	21-12-2021
66	Luxembourg	SA.59682	COVID-19: Prolongation of and Amendment to SA.57708	15-02-2021
67	Netherlands	SA.59706	COVID-19: compensation scheme for Dutch zoos under Article 107(2)(b) TFEU	12-02-2021
68	Netherlands	SA.62743	COVID-19: Guaranteed Compensation Scheme for Annulled Events	11-06-2021
69	Netherlands	SA.62368	COVID-19: Aid to the fireworks sector	21-09-2021
70	Netherlands	SA.100223	COVID-19: Amendment of Guaranteed Compensation Scheme for Annulled Events (SA.62743)	21-10-2021
71	Netherlands	SA.100303	COVID-19: Amendment to SA.62368 concerning aid to the fireworks sector	12-11-2021
72	Netherlands	SA.100258	COVID-19: Second compensation scheme for zoos under Article 107(2)(b) TFEU	09-12-2021
73	Poland	SA.59800	COVID-19 - Polish anti-crisis measures - receivables insurance	01-06-2021
74	Poland	SA.62752	COVID-19 -The Polish anti-crisis measures – aid for damage compensation and to improve the liquidity of undertakings affected by the COVID-19 outbreak 2.0 and amendments to schemes SA.57054 and SA.57306	17-06-2021
75	Poland	SA.63947	COVID-19: The Polish anti-crisis measures – aid for damage compensation and to improve the liquidity of undertakings affected by the COVID-19 outbreak	15-07-2021
76	Poland	SA.63700	COVID-19 Damage compensation to Poczta Polska S.A.	16-12-2021
77	Portugal	SA.58082	COVID-19: State guarantee for the insurance of domestic trade credit risks	31-03-2021

78	Portugal	SA.62304	COVID-19 Damages compensation to TAP	23-04-2021
79	Portugal	SA.61771	COVID - 19 - SATA - compensation of damages resulting from extraordinary events	30-04-2021
80	Portugal	SA.63041	Portugal – COVID-19: Amendment of SA.62304 (2021/N) Damage compensation to TAP Portugal	12-05-2021
81	Portugal	SA.63402	COVID 19 - Compensation to TAP SA II	21-12-2021
82	Portugal	SA.100121	COVID-19 Damages compensation to TAP III	22-12-2021
83	Slovakia	SA.63467	COVID-19 - Prolongation of aid scheme to airport operators (SA.59240)	08-07-2021
84	Slovakia	SA.100845	COVID-19 - SK- Prolongation and amendment of SA.59240 and SA.62256	14-12-2021
85	Slovenia	SA.59994	Fraport Slovenija, d.o.o. - Compensation of the damage caused by the outbreak of COVID-19	01-02-2021
86	Slovenia	SA.63636	COVID-19: Compensation to concession holder of Postojna and Predjama caves	17-08-2021
87	Spain	SA.63266	ECON - SPAIN – COVID-19 – Guarantee scheme for undertakings with composition agreements (extension of S.A.59045)	09-06-2021
88	Spain	SA.63690	COVID-19: Trade credit reinsurance scheme (Prolongation)	01-07-2021
89	Spain	SA.58343	COVID-19 aid to Air Nostrum	22-07-2021
90	Sweden	SA.60323	COVID-19: Prolongation of SA.58690 - COVID-19: aid for cancelled and postponed cultural events	15-02-2021
91	Sweden	SA.59609	Prolongation and amendment of compensation scheme SA.57372 (as amended and prolonged by SA.58631) for undertakings faced with turnover losses due to COVID-19 in June and July 2020	05-03-2021

92	Sweden	SA.62406	COVID-19: Compensation scheme for close downs and prohibitions due to COVID-19	14-07-2021
93	Sweden	SA.63073	Prolongation and amendment of compensation scheme SA.57372 (SA.58631, SA.59609) for undertakings faced with turnover losses due to COVID-19 during August 2020 – April 2021	26-07-2021
94	Sweden	SA.100044	COVID-19: Prolongation and amendment of compensation scheme SA.57372 (SA.58631, SA.59609, SA.63073) for undertakings faced with turnover losses due to COVID-19 during May – September 2021	18-10-2021
95	Sweden	SA.100464	COVID-19: Reduction of infrastructure access charges for transport services by rail	07-12-2021

### ANNEX 3.

#### Banking State aid cases: Decisions adopted by the Commission in 2021 by country

	Member State	Case number / Title	Type of Decision	Date Adoption of
1	Sweden	SA.56348	Swedish tax on credit institutions	24/11/2021
2	Denmark	SA.58478	Denmark – Third prolongation of the winding-up scheme for small banks	28/01/2021
3	Poland	SA.63002	Eleventh prolongation of the Credit Unions Orderly Liquidation Scheme	2/07/2021
4	Poland	SA.64522	Sixth prolongation of the resolution scheme for cooperative banks and small commercial banks	29/10/2021
5	Poland	SA.63965	Deferral of the formal liquidation of Bank Nowy BFG	3/08/2021
6	Ireland	SA.62303	13th prolongation of the Credit Union restructuring and stabilisation scheme	6/05/2021

7	Ireland	SA.100030	14th Prolongation of the Restructuring and Stabilisation Scheme for the Credit Union Sector	29/10/2021
8	Ireland	SA.62649	17th prolongation of the Credit Union Resolution Scheme 2020-2021	17/05/2021
9	Greece	SA.59030	Prolongation of the Liquidity Guarantee Scheme for banks	10/03/2021
10	Greece	SA.62242	Prolongation of the Hercules scheme	9/04/2021
11	Italy	SA.62880	Fourth prolongation of the Italian guarantee scheme for the securitisation of non-performing loans	14/06/2021
12	Bulgaria	SA.61100	FMFIB Capital Increase	02/12/2021