European Leveraged Finance and Capital Markets Group

Client Alert

Milbank

COVID-19 Central Bank and Governmental Liquidity Programmes

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As much of the world's business activity has gone into a forced shutdown, governments across the globe have stepped in to provide extraordinary economic support. This paper summarises the loan finance measures which are relevant to larger corporate borrowers and their potential relevance to leveraged credits, in some of the key European jurisdictions. Detail as to access criteria for some of these measures is still being formulated by central authorities.

United Kingdom

- **Programme:** The Covid Corporate Financing Facility, under which the Bank of England will buy sterling commercial paper (unsecured) from UK corporates issued on standard ICMA terms. No non-standard features are acceptable, such as subordination. The programme will be confidential as to the identity of issuers and the purchases made. The minimum purchase unit is £1 million (with further offer increments of £0.1 million). Pricing will be comparable to pre-COVID-19 issuances. The facility will run for at least 12 months.

- **Eligibility**: Investment grade (or equivalent) companies which make a material contribution to the UK economy e.g. those UK corporates (excluding the financial sector) with significant employment in the UK or which have a significant UK customer or operating base.

- **Leveraged credits:** Excluded by the investment grade eligibility criteria.

Germany

- **Programme:** €600 bn Economy Stabilization Fund. To provide medium and large companies with guarantees for new debt issues not exceeding 60 months maturity. The Fund may subscribe for subordinated debt, hybrid bonds, profit participation rights (and equity).

- **Eligibility:** Companies (excluding the financial sector) whose existence is material for the economy, the security of supply, critical infrastructure or the labour market and that satisfy at least two of: balance sheet greater than €43 million; sales revenue over €50 million; over 249 employees – each in two consecutive financial years. Companies must not have been in financial difficulty at end 2019 and not have access to other forms of financing. Companies receiving stabilization measures to comply with conditions on a case-by-case basis, including regarding use of received funds, distributions, executive compensation and further borrowings.

- **Leveraged credits:** Insolvency related measures suspend both the equitable subordination regime for shareholder loans and claw-back rights related to repayments of those loans (by end September 2023). Lender liability standards have also been lifted. The overall impact makes it easier for leveraged credits to secure additional funding from sponsors and its lender group – subject however to debt capacity under the finance documents.

- **Programme:** KfW (the state-owned development bank) has made available various COVID-19 loan programs:

  - Special Program "direct participation in syndicated/consortium-based financing". To provide up to 80% of financing to foreign or domestic enterprises for investments and working capital projects. No absolute financing amount cap although restricted by certain business size metrics e.g. 2x size of the enterprise's annual wage bill or 25% of 2019 sales.

  - KfW Entrepreneur Loan (German companies active for five years or more)/ERP Start-up Loan (German companies active for less than five years). Support is via a risk assumption (guarantee) of up to 80% of financing provided by a fronting relationship bank. Funding of up to € 1 billion per enterprise group for investments and working capital. Funding size is restricted by certain business size metrics e.g. 2x size of the enterprise's annual wage bill or 25% of 2019 sales.

- **General eligibility for KfW programmes:** Broadly, that pre COVID-19 the enterprise was not in financial difficulty, not in a covenant default and adequately financed to end 2020 with a positive outlook as to continuing as a going concern, assuming a return to normal economic conditions. In all cases the financing purpose (project) must be in Germany.

- **Leveraged credits:** The KfW Special Program may enable leveraged credits to seek KfW participation in incremental facilities. KfW Entrepreneur Loan anticipates a fronting bank.

France[1]

- **Programme:** €300 billion loan guarantee programme adopted by French Parliament on 20 March 2020 (LFR 2020). The guarantee will be available by Bpifrance (public investment bank) on loans made from 16 March to 31 December 2020. The guarantee will cover 90% of the credit (for companies with fewer than 5,000 employees and turnover of less than € 1.5 billion), 80% (for companies with turnover of >€1.5 billion and <€5 billion Euros) and 70% for other companies.

- The guarantee premium will range from 25 to 200 bps p.a., based on the size of the company and the maturity of the loan. The maximum aggregate amount of the loans for an eligible company may not exceed i) 25% of the company's turnover for 2019 for those companies formed prior to 1 January 2019 and ii) total payroll for the first two years of activity for those companies formed after 1 January 2019. The guarantee operates as an indemnity rather than a first demand; the lender has to prove a loss (after having exhausted all amicable and legal avenues to recover on the loss) and that will then determine the amount the government will be responsible to cover.

- **Eligibility:** applies to companies of all sizes but excludes financial institutions and real estate companies. Loans existing as of 16 March 2020 are ineligible. Loans receiving the guarantee must have payment deferral of at least 12 months and permit the company to amortize the loan over a maximum of five years following the 12-month period. The loans must be unsecured and borrowers may not obtain any guarantee other than by the French State. However, for large companies (companies with turnover of >€1.5 billion and more than 5,000 employees), it is contemplated that the loans could be secured or guaranteed by other guarantees than the guarantee of the French State. This position should be confirmed by the French State in a FAQ to be issued shortly. In such case, the French State will benefit from the security and guarantees on a pari passu basis with the lenders.

[1] With support from Gide Loyrette Nouel.

- **Leveraged credits:** It will not be possible to use the Bpifrance guarantee to back a new incremental facility within the existing leveraged credit framework in view of the requirement that loans shall be unsecured and shall not benefit from any other guarantee. However, we are now waiting for guidance from the French State on the possibility of relaxation of this requirement for large companies. This might open the possibility for an incremental facility to benefit from a state guarantee provided in particular that the amortization profile of the incremental facility complies with the requirements of the French regulation.

Spain[2]

- **Programme:** Royal decree-law 8/2020, on urgent and extraordinary measures to fight social and economic impact of COVID-19. Measures include a Ministry of Economic Affairs and Digital Transformation €100 bn guarantee facility for companies requiring funding to pay invoices, raise working capital or meet other liquidity needs (including to meet maturing financing obligations). Available for both new credit and renewals of existing loans but not to refinance or prepay existing financing before its maturity date. For larger companies, coverage will be 70% of new loans and 60% of renewals of existing loans. Finance provider will be required to maintain (at least to end September 2020) pricing at pre COVID-19 levels and customers working capital lines.

- **Eligibility:** Applicable to financings granted by (i) credit institutions, (ii) financial credit establishments, (iii) e-money institutions and (iv) payment institutions for companies and the self-employed. A wide variety of companies benefitting the Spanish economy may apply for these guarantees, provided they are neither (i) in a situation of payment default as of end 2019 nor (ii) undergoing a bankruptcy proceeding on 17 March 2020 nor (iii) when the company is in a situation of "difficulty" (within the meaning of the General Block Exemption Regulation) on 31 December 2019, when the Temporary Framework for State aid measures applies.

- **Leveraged credits:** Debt funds or any other entities not complying with the eligibility criteria described above indicate that would fall outside the scope of the measure.

Italy[3]

- **Programme:** Article 57 of Law Decree No. 18 (the "Cura Italia Decree") on 17 March intended to provide liquidity to larger companies and companies in those sectors that cannot access the existing (and expanded) SME central guarantee fund but that have been hit by COVID-19. Through Article 57, the Cassa Depositi e Prestiti S.p.A. (CDP) may extend guarantee mechanisms (similar to those already provided for SMEs) to large companies in certain sectors and to support banks (or other financial institutions allowed to carry out lending activities in Italy) in providing loans. In turn, the State will grant CDP a guarantee of up to 80% of its exposure. The overall amount guaranteed by CDP and the State through the implementation of the programme is expected to be in the region of €10 billion.

- **Eligibility:** Details on economic criteria, qualifying sectors, methods and conditions for the guarantee are pending further implementing legislation, which is expected to be approved in the next few weeks.

- **Leveraged credits:** Leverage finance transactions potentially in scope, as Article 57 of the Cura Italia Decree generically refers to financings provided to Italian companies having been hit by Covid-19. The upcoming implementing legislation may however provide for additional restrictions.

[2] With support from Uría.
[3] With support from Gattai, Minoli, Agostinelli.

Greece[4]

- **Programme**[5]**:** In addition to the Pandemic Emergency Purchase Programme (PEPP) announced by the ECB on 18 March 2020 that will include bonds issued by the Greek government for the first time since 2008, the Greek government (and the Hellenic Bank Association) have announced and/or already adopted, *inter alia*, the following measures:

  (a) Introduction of a financing framework (€1 bn) for affected enterprises, in the form of a refundable prepayment, with extended repayment schedule and grace period.

  (b) Suspension of the repayment of principal instalments owed to Greek banks until 30 September 2020 for impacted businesses (provided they are not in default).

  (c) A three-month interest rate subsidy to businesses of the sectors of the economy that are directly affected by Covid-19 (for performing loans).

  (d) Allocation of €1.8 billion through the European Investment Fund.

  (e) Introduction of:

    (i) loans to businesses by use of a European Investment Bank facility of €2 billion;

    (ii) introduction of a guarantee mechanism for investment loans of up to €500 million;

    (iii) funding of the Hellenic Development Bank's Entrepreneurial Fund by an additional amount of €250 million to be used for loans to businesses affected by COVID-19 along with a 100% interest rate subsidy for two months.

- **Eligibility:** The measures are applicable to businesses affected by COVID-19 on the basis of their Code of Activity ("ΚΑΔ" in Greek) (unless otherwise specified, unclear as to whether size eligibility rules are also in place). Secondary legislation to be enacted.

- **Leveraged credits:** Loans must be performing. Secondary legislation and announcements of the Hellenic Bank Association to follow.

Netherlands[6]

- **Programme:** GO (Garantie Ondernemingsfinanciering) corporate finance guarantee programme, with its budget expanded from €400 k to €1.5 billion in response to Covid-19, available to medium and large companies. The loans carry a maximum term of 8 years and a maximum amount per business of €150 million. The government provides a 50% guarantee on "fresh money" loans and/or guarantees (the financing must extend the bank's position as a creditor and subject to certain exceptions, existing facilities and refinancings do not qualify as fresh money).

- **Eligibility:** the business must have its registered office and the majority of its commercial activities in the Netherlands. The financing must be used for the enterprise's own activities. Requires businesses to have reasonable profitability and continuity prospects, and no excessive capital withdrawals may have occurred in the preceding year.

- **Leveraged credits:** subject to the eligibility requirements requiring a healthy company and a "fresh money" loan/guarantee, leveraged credits may access the programme provided there is sufficient capacity to do so under existing debt instruments.

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[4] With support from Papapolitis & Papapolitis.
[5] Informal sources indicate that the Greek government expect the banks to self-regulate and reach a common agreement in relation to financing issues in the context of the COVID-19. Should that fail, the Greek government shall impose measures via legislative intervention.
[6] With support from Houthoff.

Belgium[7]

- **Programme:** Federal Plan for Social and Economic Protection. The Law of 27 March 2020 granting authorization to provide a state guarantee to combat COVID-19 consequences formalizes an agreement between the The Federal government with the National Bank of Belgium to establish a €50 bn guarantee programme for all new additional loans and credit lines (excluding refinancing loans) with a maximum term of 12 months granted by Belgian banks (or Belgian branches of banks) until 30 September 2020 to viable non-financial companies in financial difficulties as a result of COVID-19. Upon scheme expiry, there will be an assessment of losses incurred. The first 3% of losses will be borne entirely by the financial sector. For losses between 3% and 5%, 50% of the losses will be borne by the financial sector and 50% by the government. For losses higher than 5%, 80% of the losses will be borne by the government and 20% by the financial sector.

  There are also various regional government COVID-19 related guarantee schemes.

- **Eligibility:** Viable non-financial companies that experience financial difficulties as a result of COVID-19. The Law of 27 March 2020 states that a Royal Decree shall be enacted, which will elaborate on the term "viable".

- **Leveraged credits:** Neither the Law of 27 March 2020 nor the official communication from the National Bank of Belgium indicate the scope of the term "credits". At this stage, we are only aware of refinancings being excluded from the guarantee scheme.

European State Aid COVID-19 framework

European Commission Temporary Framework for COVID-19 State aid measures, have liberalised State aid rules. The measures which directly relate to loan markets:

- Member States may establish guarantee schemes supporting bank loans taken out by companies with subsidised premiums. The guarantees may relate to both investment and working capital loans, with limits on the maximum loan amount in certain circumstances. Guarantees cannot exceed 90% (where losses are sustained proportionally under same conditions by the credit institution and the State) and 35% (where the State provides a first-loss guarantee). The maximum duration of the guarantee is limited to six years.

- Member States can also enable public loans to companies with subsidised interest rates. The loans may relate to both investment and working capital loans, with limits on the maximum loan amount.

- The State aid offered may only be made available to companies, which were not in difficulty on 31 December 2019, but fell into difficulty thereafter due to the outbreak of COVID-19. Member States must grant the aid by 31 December 2020 at the latest.

[7] With support from Loyens & Loeff.

European Leveraged Finance/Capital Markets Contacts

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