



EUROPEAN COMMISSION

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SENSITIVE* : *COMP Operations*

**Subject: State Aid SA.60524 (2020/N) – Belgium
COVID-19: Flemish Protection Mechanism for undertakings that
suffer a turnover decline due to the continuing Covid-19 measures of
28 October 2020**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 21 December 2020, Belgium notified limited amount of aid in the framework of the Flemish Protection Mechanism for undertakings that suffer a turnover decline due to the continuing Covid-19 measures of 28 October 2020 (“the measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended (“the Temporary Framework”)¹. By email of 6 January 2021 the Commission

* Handling instructions for SENSITIVE information are given at <https://europa.eu/db43PX>

¹ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, 19 March 2020, OJ C 91I, 20.3.2020, p. 1, as amended by Communication from the Commission C(2020) 2215 final of 3 April 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 112I, 4.4.2020, p. 1, by Communication from the Commission (2020/C 164/03) of 8 May 2020 on the Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 164, 13.5.2020, p. 3, by Communication from the Commission C(2020) 4509 final of 29 June 2020 on the Third Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 218, 2.7.2020, p. 3, by Communication from the Commission C(2020) 7127 final of 13 October 2020 on the Fourth Amendment of 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, OJ C 340 I, 13.10.2020, p. 1 and by Communication from the Commission C(2021)564 final of 28 January 2021 on the Fifth Amendment of 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, not yet published.

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Hare Excellentie mevrouw Sophie Wilmès
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requested additional information on the measure. The Flemish region authorities replied by email of 7 January 2021. On 19 January the Commission held a teleconference with the Flemish region authorities.

- (2) The Flemish region authorities exceptionally agree to waive their rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958² and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (3) The Flemish region authorities consider that the COVID-19 outbreak affects the real economy. The measure forms part of an overall package of measures and aims to ensure that the disruptions caused by the outbreak and the following COVID-19 related restrictive measures do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the outbreak.
- (4) The Flemish region authorities confirm that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (5) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 2 and 3.1 of the Temporary Framework.

2.1. The nature and form of aid

- (6) The measure provides aid in the form of direct grants.

2.2. Legal basis

- (7) The legal basis for the measure is a draft Decision of the Flemish region Government regarding a Flemish Protection Mechanism for undertakings that suffer a turnover decline due to the continuing Covid-19 measures of 28 October 2020 (‘Besluit van de Vlaamse Regering betreffende het Vlaams Beschermingsmechanisme voor ondernemingen die een omzetsdaling hebben ten gevolge van de aanhoudende coronavirusmaatregelen van 28 oktober 2020’), draft Decision reference number VR 2020 1812 DOC.1572.

2.3. Administration of the measure

- (8) The Flemish Agency for Innovation and Entrepreneurship (Agentschap Innoveren en Ondernemen (VLAIO)) is responsible for administering the measure.

2.4. Budget and duration of the measure

- (9) The measure will be financed by the budget of the Flemish Region of Belgium. The estimated budget of the measure is EUR 200 million.

² Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

- (10) Aid may be granted under the measure as from the notification of the Commission's decision until no later than 31 December 2021.

2.5. Beneficiaries

- (11) The final beneficiaries of the measure are undertakings active in the Flemish region as registered in the Crossroads Bank for Enterprises³. The Flemish region authorities estimate that approximately 53 000 companies will benefit from the scheme. All undertakings, irrespective of their size, can apply for the aid. However, credit and financial institutions are excluded as eligible final beneficiaries.
- (12) The Flemish region authorities confirm that the measure is not open to large and medium sized undertakings that were already in difficulty on 31 December 2019 within the meaning of the General Block Exemption Regulation ("GBER"),⁴ the Agricultural Block Exemption Regulation ("ABER"),⁵ or of the Fisheries Block Exemption Regulation ("FBER")⁶.
- (13) Aid can be granted to micro and small undertakings that were already in difficulty on 31 December 2019, provided that, at the moment of granting of the aid, they are not subject to collective insolvency procedure under national law and that they have not received rescue aid or restructuring aid.
- (14) Some undertakings are excluded from the scope of application⁷ of the measure:
- a) undertakings in one of the following legal situations: dissolution, discontinuation, bankruptcy, liquidation;
 - b) holding companies, management companies or patrimony companies;
 - c) the enterprises whose manager, as director or partner, is linked to another enterprise which received the subsidy and to which they provide business services;
 - d) companies with overdue recovery on previous Covid-19 aid to the Agency for Innovation and Entrepreneurship;

³ <https://economie.fgov.be/en/themes/enterprises/crossroads-bank-enterprises>

⁴ As defined in Article 2 (18) of Commission Regulation (EU) No 651/2014 of 17 June 2014.

⁵ As defined in Article 2 (14) of the 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, OJ L 193 of 1.7.2014, p.1.

⁶ As defined in Article 3 (5) of the 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, OJ L 369 of 24 December 2014, p. 37.

⁷ Article 5 of the draft legal basis.

- e) undertakings which, on the first day of the month referred to in Article 1(8) of the draft legal basis⁸, had not yet started up and did not have an active operating establishment in the Flemish Region in accordance with the Crossroads Bank for Enterprises.

2.6. Sectoral and regional scope of the measure

- (15) The measure applies to the territory of the Flemish region in Belgium.
- (16) The measure is open to all sectors except the financial sector.

2.7. Basic elements of the measure

- (17) According to the draft legal basis, the following undertakings are eligible for the measure:
 - a) undertakings that suffer a turnover decline, excluding VAT, of at least 60% in the months of January and/or February 2021, compared to the same reference period in 2020; or
 - b) undertakings active in the food and drink sectors⁹ that were compulsorily closed in January and/or February 2021 as a result of the coronavirus measures, unless their turnover in the reference period, namely January and/or February 2020, was 50% or more related to take-away activities (in this case, undertakings can still apply if they fulfil the conditions under a) above); or
 - c) undertakings active in sectors that were compulsorily closed as a result of the coronavirus measures during January and/or February 2021, included in the list¹⁰ of eligible sectors. If the measures would become less strict and the sectors would be allowed to reopen, then the provisions under a) would apply pro rata for the period of reopening.
- (18) Eligible undertakings can receive a grant amounting to 10% of the turnover registered¹¹ in the reference period in 2020, excluding VAT.
- (19) Beneficiaries shall apply for aid between 16 February and 15 March 2021 regarding the turnover loss registered in January 2021, and between 16 March and 15 April 2021 regarding the turnover registered in February 2021.
- (20) The aid amounts to a minimum EUR 600 per month, independently from the size of the undertaking, and to a maximum EUR 7 500 for undertakings with up to 9

⁸ January 2021 or February 2021 respectively, depending on the month for which a grant is requested.

⁹ NACE Rev.2 codes: 56101: full-service catering services; 56102: food services with reduced service; 56301: cafés and bars.

¹⁰ Sectors enumerated in the draft document VR 2020 1812 DOC.1572/3. The Minister responsible for the economy may amend the list of sectors, if additional sectors of economy are compulsorily closed or may be opened back as a result of the coronavirus measures.

¹¹ The amount of aid may be reduced for self-employed persons working part-time.

employees, EUR 15 000 for undertakings with between 10 and 49 employees and up to EUR 40 000 for undertakings with 50 employees or more.

- (21) Regarding undertakings active in sectors that were closed as a result of the coronavirus measures, the maximum and minimum grant amount, per month, is calculated on a pro rata basis depending on the duration of the compulsory closure period. This means that the aid amount is based on the number of calendar days of closure in the mandatory closure period in the months of January and/or February 2021.
- (22) Undertakings which generate 50% or more of their turnover from subcontracting to a compulsorily closed sector, may opt for a reference period corresponding to the mandatory closure period of that closed sector. Their minimum and maximum grant amounts will be calculated on a pro rata basis. Such undertakings must, however, have a turnover reduction of at least 60% as a result of the coronavirus measures.
- (23) Aid may be granted provided that the total nominal value, including other aid granted in accordance with section 3.1 of the Temporary Framework, does not exceed the following amounts (all figures used being expressed in gross):
 - (a) EUR 225 000 for undertakings operating in the primary production sector of agricultural products¹², or
 - (b) EUR 270 000 for undertakings operating in the fisheries and aquaculture sector¹³, or
 - (c) EUR 1 800 000 for other undertakings.
- (24) The Flemish region authorities confirm that aid granted to undertakings active in the fishery and aquaculture sector does not concern any of the categories of aid referred to in Article 1, paragraph (1)(a) to (k) of Commission Regulation (EU) No 717/2014.
- (25) The Flemish region authorities also confirm where an undertaking is active in several sectors to which different maximum amounts apply in accordance with points 22 (a) and 23 (a) of the TF COVID-19 as amended, it will be ensured, by appropriate means such as separation of accounts, that for each of these activities the relevant ceiling is respected and that the overall maximum amount of EUR 1 800 000 is not exceeded per undertaking. Where an undertaking is active in the sectors covered by point 23 (a) of the TF COVID-19 as amended, the overall maximum amount of EUR 270 000 is not exceeded per undertaking.
- (26) The Flemish region authorities additionally confirm that for beneficiaries active in the processing and marketing of agricultural products, the aid is not being partly

¹² All products listed in Annex I to the TFEU with the exception of the products of the fisheries and aquaculture sector.

¹³ Products listed in Annex I to Regulation No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000, OJ L 354, 28.12.2013, p. 1.

or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned.

2.8. Cumulation

- (27) The Flemish region authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations¹⁴ and/or the GBER and/or the ABER and/ or the FBER, provided the provisions and cumulation rules of those Regulations are respected. The measure itself follows earlier Flemish region aid schemes approved under de minimis rules.
- (28) The Flemish region authorities confirm that aid under the notified measure may be cumulated with other forms of Union financing, provided that the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.
- (29) The Flemish region authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Framework provided the provisions in those specific sections are respected.
- (30) The Flemish region authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the measure or aid under other measures approved by the Commission under section 3.1 of the Temporary Framework, the overall maximum cap per undertaking, as set out in points 22(a) and 23(a) of that framework, will be respected.

2.9. Monitoring and reporting

- (31) The Flemish region authorities confirm that they will respect the monitoring and reporting obligations laid down in section 4 of the Temporary Framework (including the obligation to publish relevant information on each individual aid above EUR 100 000 granted under the measure on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting¹⁵).

¹⁴ Commission Regulation (EU) No 1407/2013 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 (OJ L 352, 24.12.2013, p. 1), 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), Commission Regulation (EU) No 717/2014 of 27 June 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) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

¹⁵ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014, Annex III to Commission Regulation (EU) No 702/2014 and Annex III of the Commission Regulation (EU) No 1388/2014.

3. ASSESSMENT

3.1. Lawfulness of the measure

- (32) By notifying the measure before putting it into effect, the Flemish region authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

- (33) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (34) The measure is imputable to the State, since it is administered by the Flemish Agency for Innovation and Entrepreneurship (recital (8)) and it is based on the draft legal act mentioned in recital (7). It is financed through State resources, since it is financed by the regional budget (recital (9)).
- (35) The measure confers an advantage on its beneficiaries in the form of direct grants (recital (6)). The measure thus confers on those beneficiaries an advantage that they would not have received under normal market conditions.
- (36) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, and excludes in particular the financial sector (recitals (11) and (16)).
- (37) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (38) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU.

3.3. Compatibility

- (39) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.
- (40) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid “*to remedy a serious disturbance in the economy of a Member State*”.
- (41) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (in section 2) that “*the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings*”. The Commission concluded that “*State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs*”.

- (42) The measure aims at preserving the viability of the undertakings at a time when the normal functioning of the markets, including the credit market is severely disturbed by the consequences of the COVID-19 outbreak and when that outbreak and consequences are affecting the wider economy and leading to severe disturbances of the real economy of Member States.
- (43) The measure is one of a series of measures conceived at regional level by the Flemish region authorities to remedy a serious disturbance in their economy. It has been designed to meet the requirements of a specific category of aid (“Limited amounts of aid”) described in section 3.1 of the Temporary Framework.
- (44) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the Temporary Framework. In particular:
- The aid takes the form of direct grants (recital (6)).
 - The overall nominal value of the direct grants and of the other measures granted under section 3.1 of the Temporary Framework shall not exceed EUR 1 800 000 per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges (recital (23)). The measure therefore complies with point 22(a) of the Temporary Framework.
 - The overall nominal value of the direct grants and of the other measures granted under section 3.1 of the Temporary Framework does not exceed EUR 270 000 per undertaking active in the fishery and aquaculture sector (see recital (23)) or EUR 225 000 per undertaking active in the primary production of agricultural products (recital (23)). The measure therefore complies with point 23(a) of the Temporary Framework.
 - Aid is granted under the measure on the basis of a scheme with an estimated budget as indicated in recital (9). The measure therefore complies with point 22(b) of the Temporary Framework.
 - Aid may not be granted under the measure to medium¹⁶ and large enterprises that were already in difficulty on 31 December 2019 (recital (12)). The measure therefore complies with point 22(c) of the Temporary Framework.
 - Aid may be granted to micro and small enterprises that were in difficulty on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid¹⁷ or restructuring aid¹⁸ (recital (13)).

¹⁶ As defined in Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014.

¹⁷ Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

¹⁸ Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

The measure therefore complies with point 22(c)*bis* of the Temporary Framework.

- Aid will be granted under the measure no later than 31 December 2021 (recital (10)). The measure therefore complies with point 22(d) of the Temporary Framework.
 - Aid granted to undertakings active in the processing and marketing of agricultural products are excluded when the aid is conditional on being partly or totally passed on to primary producers, fixed on the basis of the price or quantity of products purchased from primary producers, or put on the market by such producers (recital (26)). The measure therefore complies with point 22(e) of the Temporary Framework.
 - Aid granted to undertakings active in the primary production of agricultural products must not be fixed on the basis of the price or quantity of products put on the market (recital (26)). The measure therefore complies with point 23(b) of the Temporary Framework.
 - Aid granted to undertakings active in the fishery and aquaculture sector does not concern any of the categories of aid referred to in Article 1, paragraph (1)(a) to (k) of Commission Regulation (EU) No 717/2014¹⁹ (recital (24)). The measure therefore complies with point 23(c) of the Temporary Framework.
 - Where an undertaking is active in several sectors to which different maximum aid amounts apply in accordance with points 22(a) and 23(a) of the Temporary Framework, the Flemish authorities will ensure, by appropriate means such as separation of accounts, that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 1 800 000 is not exceeded per undertaking. Where an undertaking is active in the sectors covered by point 23(a) of the Temporary Framework, the overall maximum amount of EUR 270 000 is not exceeded per undertaking (recital (25)). The measure therefore complies with point 23bis of the Temporary Framework.
- (45) The Flemish region authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (31)). The Flemish region authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework are respected and the cumulation rules of the relevant Regulations are respected (recitals (27) to (30)).
- (46) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Framework.

¹⁹ Commission Regulation (EC) No (EU) No 717/2014 of 27 June 2014.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

The decision is based on non-confidential information and is therefore published in full on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

