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SENSITIVE* : *COMP Operations*

**Subject: State Aid SA.58691(2020/N) – Belgium
COVID-19: Aid to the Flemish coach sector**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 29 September 2020, Belgium notified a measure in the form of limited amounts of aid (Aid to the Flemish coach sector, “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
- (2) On 30 September 2020 and 5 October, the Commission sought a clarification from Belgium. The Belgium authorities each time replied on the same day.
- (3) Belgium exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with

* 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, 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 C(2020) 3156 final of 8 May 2020 on the Amendment of 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 and 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.

Hare Excellentie mevrouw Sophie Wilmès
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Article 3 of Regulation 1/1958² and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (4) Belgium considers that the COVID-19 outbreak has started to affect the real economy. The measure forms part of an overall package of measures and aims to ensure that sufficient liquidity remains available in the market, to counter the liquidity shortage faced by undertakings because of the outbreak, to ensure that the disruptions caused by the outbreak do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the outbreak.
- (5) Coach companies were particularly hit by the outbreak. From 14 March until 7 June 2020, all non-essential trips were prohibited in Belgium. As a result, more than 80% of the bus transport (public transport not included) was cancelled. Even after 7 June 2020, the turnover of coach companies fell by about 80% compared to 2019.
- (6) The measure only covers part of Belgium, namely the Flemish region. As coach companies are an important part of the Flemish transport system and to prevent them from going bankrupt, the Flemish Government aims to compensate part of their most significant fixed cost, the depreciation value of their bus fleet.
- (7) Belgium confirmed 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.
- (8) 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

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

2.2. Legal basis

- (10) The legal basis for the measure is a Decision of the Flemish Government [*“het besluit van de Vlaamse Regering tot wijziging van het besluit van de Vlaamse Regering van 10 juli 2020 tot toekenning van een subsidie aan de autobus- en autocarsector die een omzetsdaling hebben ten gevolge van de maatregelen genomen door de Nationale Veiligheidsraad vanaf 12 maart 2020 inzake het coronavirus”*], a draft of which was included with the notification.

2.3. Administration of the measure

- (11) The Ministry of the Flemish Community – Department for Mobility and Public Works is responsible for administering the measure.

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

2.4. Budget and duration of the measure

- (12) The estimated budget of the measure is EUR 5.1 million.
- (13) The measure is financed through the budget of the Flemish Region.
- (14) Aid may be granted as from its approval by the Commission until no later than 31 December 2020.

2.5. Beneficiaries

- (15) The beneficiaries of the measure are undertakings active in the coach sector (NACE codes 4931 and 4939001) if they are registered in the Flemish Region and hold a license for special regular or occasional services. Financial institutions are excluded as eligible beneficiaries.
- (16) Aid may not be granted under the measure to medium³ and large enterprises that were already in difficulty within the meaning of the General Block Exemption Regulation (“GBER”)⁴ on 31 December 2019. Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the General Block Exemption Regulation (“GBER”)⁵ 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 aid⁶ or restructuring aid⁷.

2.6. Regional scope of the measure

- (17) The measure applies to the territory of the Flemish Region.

2.7. Basic elements of the measure

- (18) The Flemish Government aims to compensate part of the most significant fixed cost of coach companies, namely the depreciation value of their bus fleet.
- (19) The measure comes on top of a preceding measure, dating from 10 July 2020, to grant coach companies a subsidy of 1% of the purchase cost of their buses, with a maximum of EUR 200.000 per undertaking. That aid was granted under the general de minimis Regulation⁸, but according to the Belgian authorities, the cap

³ As defined in Annex I to 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, OJ L 187, 26.6.2014, p. 1.

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

⁵ As defined in Article 2(18) of Commission Regulation (EU) No 651/2014.

⁶ 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.

⁷ 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.

⁸ 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).

puts larger companies at a disadvantage compared to smaller ones. Meanwhile, it appears that the duration and economic impact of the crisis is of such a magnitude that more support is needed, especially for larger coach companies.

- (20) To supplement the preceding measure, the Flemish Government wishes to make available an additional grant of 1,5%, with a maximum of EUR 800.000 per undertaking.
- (21) The Belgian authorities explained that the combined amount of aid (2,5% of the purchase cost, with a maximum of EUR 1 million per undertaking) would correspond to approximately 50% of the depreciation value of those vehicles, calculated on an average lifespan of 10 years, during the period from March to August 2020.
- (22) Coach companies are eligible if they are registered in the Flemish Region and hold a license for special regular or occasional services.
- (23) Buses owned by those companies are excluded from the additional grant under the measure if they are subject to a contract to carry out journeys for the public transport company *De Lijn* from October 2020 to December 2020.
- (24) The Belgian authorities estimate approximately 160 coach companies are eligible, each owning on average 12 buses that are eligible for the additional grant under the measure.

2.8. Cumulation

- (25) The Belgian authorities confirm that aid granted under the measure may be cumulated with aid under *de minimis* Regulation⁹ or the General Block Exemption Regulation¹⁰ provided the provisions and cumulation rules of those Regulations are respected.
- (26) The Belgian 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.
- (27) The Belgian 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) of that framework, will be respected.

2.9. Monitoring and reporting

- (28) The Belgian 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

⁹ Commission Regulation (EU) No 1407/2013.

¹⁰ Commission Regulation (EU) No 651/2014.

State aid website or Commission's IT tool within 12 months from the moment of granting¹¹).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (29) By notifying the measure before putting it into effect, the Belgian authorities have respected their obligations under Article 108(3) TFEU. Belgium notified the measure as a scheme and confirmed that no further implementing measures are required to the individual undertakings.

3.2. Existence of State aid

- (30) 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.
- (31) The measure is imputable to the State, since it is administered by the Flemish Government and it is based on a Decision of the Flemish Government (see recital (10)). It is financed through State resources, since it is financed by public funds.
- (32) The measure confers an advantage on its beneficiaries in the form of direct grants. The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.
- (33) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, i.e. coach companies registered in Flanders.
- (34) 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.
- (35) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Belgian authorities do not contest that conclusion.

3.3. Compatibility

- (36) 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.
- (37) 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*".

¹¹ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III to Commission Regulation (EU) No 1388/2014.

- (38) 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”*.
- (39) The measure aims at alleviating the burden of fixed costs for coach companies at a time when the normal functioning of markets is severely disturbed by the COVID-19 outbreak and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States.
- (40) The measure is one of a series of measures conceived by the Belgian authorities to remedy a serious disturbance in their economy. The importance of the measure to preserve employment and economic continuity is widely accepted (see also recital (6)). Furthermore, the measure has been designed to meet the requirements of a specific category of aid (*“Aid in the form of direct grants”*) described in section 3.1 of the Temporary Framework.
- (41) 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 (9)).

The overall nominal value of the grants will not exceed EUR 800 000 per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges. The measure therefore complies with point 22(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 (12). The measure therefore complies with point 22(b) of the Temporary Framework;
 - Aid may not be granted under the measure to medium¹² and large enterprises that were already in difficulty on 31 December 2019 (see recital (16)). 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 aid¹³ or restructuring aid¹⁴ (see recital (16)). The measure therefore complies with point 22(c)bis of the Temporary Framework;

¹² As defined in Annex I to Commission Regulation (EU) No 651/2014

¹³ 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.

¹⁴ 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.

- Aid will be granted under the measure no later than 31 December 2020. The measure therefore complies with point 22(d) of the Temporary Framework;
- (42) The Belgian authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (28)). The Belgian 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 (25) to (27)).
- (43) 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.

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/ejojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

