



EUROPEAN COMMISSION

Brussels, 4.3.2022
C(2022) 1448 final

SENSITIVE*: *COMP Operations*

**Subject: State Aid SA.101863 (2022/N) – Belgium
COVID-19: Flemish Protection Mechanism for undertakings that
suffer a turnover decline due to the Covid-19 measures of 28 October
2021**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 7 February 2022, Belgium notified aid in the form of limited amounts of aid ('Flemish Protection Mechanism for undertakings that suffer a turnover decline due to the Covid-19 measures of 28 October 2021 (the "measure"')) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the "Temporary Framework").¹
- (2) 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 Article 3 of Regulation 1/1958² and to have this Decision adopted and notified in English.

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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 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), C(2021) 564 (OJ C 34, 1.2.2021, p. 6) and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

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

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2. DESCRIPTION OF THE MEASURE

- (3) The Flemish region authorities consider that the COVID-19 pandemic continues affecting the real economy. Since the summer of 2021, several measures were adopted that offer more flexibility in re-opening the economy, but some restrictions remain in place. In addition, the continuing growth of the fourth wave of the COVID-19 pandemic and the stress on the health care services and hospitals have led to the adoption of new restrictive measures since October 2021, such as the (partial or complete) closure of certain sectors. Some sectors, in particular discotheques, dancing clubs, private venues, indoor playgrounds for children, recreational spaces and gambling were closed and other sectors were limited in capacity and opening hours. The phase of pandemic alert was prolonged until 27 April 2022. The aim of the measure is therefore to ensure that sufficient liquidity remains available to affected undertakings and that the disruptions caused by the continuing COVID-19 pandemic do not undermine their viability³.
- (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 Government (reference number VR 2022 0402 DOC.0137/2) regarding a Flemish Protection Mechanism for undertakings that suffer a turnover decline due to the Covid-19 measures of 28 October 2021⁴ (the “draft Decision”), which will be adopted after the notification of the Commission decision approving the measure.

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.

³ This measure is similar to previous aid schemes approved by the Commission in case SA.60524, as amended in cases SA.62156, SA.62826, SA.64488 and SA.64739, which related to the period from 1 January until 30 September 2021, and in case SA.101027, as amended in case SA.101656, which related to the period from 20 November 2021 until 31 December 2021.

⁴ “Besluit van de Vlaamse Regering betreffende het Vlaams Beschermingsmechanisme voor ondernemingen die een omzetzaling hebben ten gevolge van de coronavirusmaatregelen van 28 oktober 2021”.

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 59.3 million.
- (10) Aid may be granted under the measure as from the notification of the Commission's decision approving the measure until no later than 30 June 2022.

2.5. Beneficiaries

- (11) The beneficiaries of the measure are undertakings which, on 1 January 2022, operate in the eligible sectors (recital (15)) in the Flemish region, having the corresponding NACE codes in the Crossroads Bank for Enterprises. The Flemish region authorities expect around 6 000 applications for aid under this measure. All undertakings, irrespective of their size, can apply for the aid. However, credit and financial institutions are excluded as eligible final beneficiaries.
- (12) Aid may not be granted under the measure to medium⁵ and large enterprises that were already in difficulty within the meaning of the General Block Exemption Regulation ("GBER")⁶ on 31 December 2019. Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the GBER 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 aid⁷ or restructuring aid.⁸
- (13) The following undertakings are excluded from the scope of application of the measure, in particular:
 - (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) undertakings which, on 1 January 2022, had not yet started up and did not have an active operating establishment in the Flemish Region according to the Crossroads Bank for Enterprises;
 - (e) undertakings which voluntarily closed in the period from 1 January to 31 March 2022, unless they were closed because of the normal annual closure.

⁵ 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.

⁶ As defined in Article 2(18) of GBER.

⁷ 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.

⁸ 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.

2.6. Sectoral and regional scope of the measure

- (14) The measure applies to the territory of the Flemish region in Belgium.
- (15) The measure is only open to affected undertakings including self-employed in the following sectors (more precisely defined in the legal basis by reference to the relevant NACE codes):
- Event catering and other food service activities;
 - Holiday and other short-stay accommodation;
 - Activities of other membership organisations;
 - Travel agency and tour operator activities;
 - Other passenger land transport;
 - Events and cultural activities;
 - Operation of arts facilities;
 - Retail sale in non-specialised stores with food, beverages or tobacco predominating;
 - Sports activities;
 - Motion picture projection activities;
 - Beverage serving activities;
 - Activities of amusement parks and theme parks;
 - Other amusement and recreation activities;
 - Botanical and zoological gardens and nature reserves activities;
 - Gambling and betting activities.

2.7. Basic elements of the measure

- (16) The objective of the measure is to support undertakings that suffered a decline in turnover during the period in which their usual operation was restricted, limited or severely affected by the restrictive governmental measures adopted in the common interest to combat the COVID-19 pandemic. The maximum period covered runs from 1 January 2022 until 31 March 2022. The period covered depends on the operating restrictions put in place for certain sectors and therefore may be shorter than the whole first quarter of 2022.
- (17) Under the measure, undertakings are eligible for aid if they can demonstrate a total decrease in their turnover of at least:
- 30% in the first quarter of 2022, compared to the same period in 2019; and
 - 60% during the period of operating restrictions within the first quarter of 2022, compared to the same period in 2019.

- (18) Eligible undertakings can receive a grant amounting to 10% of the turnover registered⁹ in the first quarter of 2019, excluding VAT.
- (19) The maximum amount¹⁰ of the grant is:
- (a) EUR 33 750 for undertakings with up to 9 employees;
 - (b) EUR 67 500 for undertakings with between 10 and 49 employees;
 - (c) EUR 180 000 for undertaking with 50 employees or more.
- (20) By way of derogation from recital (17), undertakings that were mandatorily closed as a result of the restrictive measures linked to the COVID-19 pandemic in the Flemish Region¹¹ do not have to demonstrate a decrease in turnover. For those undertakings, the maximum grant amount 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 of the beneficiary in the mandatory closure period within the first quarter 2022. During the mandatory closure, the aid amounts to 10% of the turnover in the same period in 2019, excluding VAT.
- (21) The beneficiaries may apply for an advance payment of the grant¹² if the following conditions are met:
- To have applied for aid under the previous Flemish Protection Mechanism for undertakings that suffer a turnover decline due to the Covid-19 measures of 28 October 2021¹³; and
 - To have suffered a turnover decline of 60% in January 2022 compared to the same period in 2019.
- (22) The advance payment will amount to 10% (5 % in the case of an ancillary self-employed person) of one third of the turnover registered in the same period in 2019¹⁴, excluding VAT.
- (23) The maximum advance is one third of the maximum grant amounts referred to in recital (19), calculated on pro rata basis depending on the duration of the compulsory closure period.
- (24) By way of derogation from recital (21), undertakings that were mandatorily closed in January 2022 as a result of the restrictive measures linked to the

⁹ The amount of aid may be reduced for self-employed persons in supplementary employment.

¹⁰ These amounts are set for the whole period of 3 months.

¹¹ Namely, to date, undertakings active in the sectors of discotheques and dancing in the period from 1 January 2022 until 17 February 2022 and undertakings active in the sectors of indoor playgrounds, recreational spaces and gambling in the period from 1 January 2022 until 27 January 2022.

¹² These beneficiaries will have to apply for the notified aid scheme at the start of the application period. Otherwise, the advanced payment shall be repaid or recovered.

¹³ Approved by the Commission in case SA.101027, as amended by SA.101656.

¹⁴ The turnover registered in the same period in 2019 corresponds to the average turnover for the period from 1 January until 31 March 2019.

COVID-19 pandemic in the Flemish Region do not have to demonstrate a decrease in turnover¹⁵.

- (25) The Flemish region authorities confirm that the overall maximum aid amount under the measure shall not exceed EUR 2.3 million per undertaking at any given point in time as provided for in point 22(a) the Temporary Framework (all figures used being gross, before any deduction of tax or other charges).

2.8. Cumulation

- (26) The Flemish region authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations¹⁶ or the GBER provided the provisions and cumulation rules of those Regulations are respected.
- (27) 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.
- (28) 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 point 22(a) of that framework, will be respected.

2.9. Monitoring and reporting

- (29) 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 granting¹⁷).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (30) By notifying the measure before putting it into effect (recital (7)), the Belgian authorities have respected their obligations under Article 108(3) TFEU.

¹⁵ If the undertakings are still mandatorily closed in February and/or March 2022, the aid will be automatically calculated and granted to the eligible beneficiaries.

¹⁶ 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), 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).

¹⁷ Referring to information required in Annex III to the GBER.

3.2. Existence of State aid

- (31) 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.
- (32) 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 Decision mentioned in recital (7). It is financed through State resources, since it is financed by public funds (recital (9)).
- (33) 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.
- (34) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular undertakings active in specific sectors (recital (15)), excluding the financial sector.
- (35) 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.
- (36) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Flemish region authorities do not contest that conclusion.

3.3. Compatibility

- (37) 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.
- (38) 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”.
- (39) 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*”.
- (40) The measure aims at preserving the viability of the undertakings active in specific sectors that suffered a decline in turnover as a result of the restrictive governmental measures applicable in the Flemish region of Belgium (recital (3)), at a time when the normal functioning of markets is severely disturbed by the

COVID-19 pandemic and that pandemic is affecting the wider economy and leading to severe disturbances of the real economy of Member States.

- (41) The measure is one of a series of measures conceived by the Belgian authorities to remedy a serious disturbance in their economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“Limited amount of aid”) described in Section 3.1 of the Temporary Framework.
- (42) 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 2.3 million per undertaking (recital (25)); 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 (9). The measure therefore complies with point 22(b) of the Temporary Framework.
 - Aid may not be granted under the measure to medium 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 aid or restructuring aid (recital (12)). The measure therefore complies with point 22(c)bis of the Temporary Framework.
 - Aid will be granted under the measure no later than 30 June 2022 (recital (10)). The measure therefore complies with point 22(d) of the Temporary Framework.
- (43) 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 (recital (4)).
- (44) The Flemish region authorities confirm that the monitoring and reporting rules laid down in Section 4 of the Temporary Framework will be respected (recital (29)). 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 and the cumulation rules of the relevant Regulations are respected (recitals (26) to (28)).
- (45) 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/elojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

